DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 09-907	
Title:	Jason M. Ransom, Petitioner v. FIA Card Services, N.A., fka MBNA America Bank, N.A.
Docketed:	January 29, 2010
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Nos.:	(08-15066)
Decision Date:	August 14, 2009
Rehearing Denied:	October 28, 2009
Questions Presented	

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Jan 25 2010	Petition for a writ of certiorari filed. (Response due March 1, 2010)
Mar 1 2010	Brief of respondent MBNA, America Bank, N.A. in opposition filed.
Mar 16 2010	Reply of petitioner Jason M. Ransom filed. (Distributed)
Mar 17 2010	DISTRIBUTED for Conference of April 2, 2010.
Apr 12 2010	DISTRIBUTED for Conference of April 16, 2010.
Apr 19 2010	Petition GRANTED.
May 20 2010	The time within which to file the joint appendix and petitioner's brief on the merits is extended to and including June 21, 2010.
May 20 2010	The time within which to file respondent's brief on the merits is extended to and including August 6, 2010.
Jun 21 2010	Brief of petitioner Jason M. Ransom filed.
Jun 21 2010	Joint appendix filed. (Statement of costs filed)
Jun 28 2010	Brief amicus curiae of National Association of Consumer Bankruptcy Attorneys filed.
Jul 20 2010	CIRCULATED.
Jul 20 2010	SET FOR ARGUMENT ON Monday, October 4, 2010.
Jul 27 2010	Record received from U.S.C.A. for 9th Circuti. (1 envelope)
Aug 6 2010	Brief of respondent MBNA, America Bank, N.A. filed. (Distributed)
Aug 13 2010	Brief amicus curiae of the United States filed. (Distributed)
Aug 13 2010	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Aug 13 2010	Brief amicus curiae of G. Eric Brunstad, Jr. filed. (Distributed)
Sep 7 2010	Reply of petitioner Jason M. Ransom filed. (Distributed)
Sep 28 2010	Motion of the Acting Solicitor General for leave to participate in oral argument

	as amicus curiae and for divided argument GRANTED.
Oct 4 2010	Argued. For petitioner: Christopher P. Burke, Las Vegas, Nev. For respondent: Deanne E. Maynard, Washington, D. C.; and Nicole A. Saharsky, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.)

PETITION
FOR
WRIT OF
CERTIORARI

Supreme Court, U.S.
FILED

No. 09-907 JAN 25 2010

OFFICE OF THE CLERK

In The
Supreme Court of the United States

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JASON M. RANSOM,

Petitioner,

v.

MBNA, AMERICA BANK, N.A.,

Respondent.

◆

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

◆

PETITION FOR WRIT OF CERTIORARI

◆

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QUESTION PRESENTED FOR REVIEW

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

PARTIES TO THE PROCEEDINGS

The petitioner in this case is Jason M. Ransom. The respondent is MBNA, America Bank, N.A. The United States of America, United States Trustee, appeared as Amicus Curiae in the appellate proceedings below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Ninth Circuit.

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OPINION AND JUDGMENT BELOW

The Bankruptcy Court's memorandum denying confirmation is reprinted in the Appendix ("App.") at App. 36. The Bankruptcy Court's order denying confirmation is reprinted at App. 48. The opinion of the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals is reprinted at App. 15, and officially reported at 380 B.R. 799 (B.A.P. 9th Cir. 2007). The opinion of the Ninth Circuit Court of Appeals is reprinted at App. 1, and officially reported at 577 F.3d 1026 (9th Cir. 2009). The order of the Ninth Circuit denying the petition for rehearing is reprinted at App. 5.

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STATEMENT OF JURISDICTION

The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(L). The Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(b). The Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(d). This Court has jurisdiction under 28 U.S.C. § 1254(1).

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STATUTORY PROVISIONS INVOLVED

The provisions of 11 U.S.C. §§ 707 and 1325 are reprinted at App. 50 and App. 64.

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STATEMENT OF THE CASE

The facts in this matter are undisputed. The debtor, Jason Ransom, filed for bankruptcy relief under chapter 13 of Title 11 of the United States Code on July 5, 2006. One of the debtor's assets, as listed in the schedules of his bankruptcy petition, was a 2004 Toyota Camry which he owned in full. There were no liens or secured loans of any kind on his vehicle. The debtor listed $82,542.93 in unsecured claims, including the claim of MBNA America Bank in the amount of $32,896.73.

Debtor's Statement of Current Monthly Income ("Form B22C") reported monthly income of $4,248.56, and annual income of $50,982.72. As a result, his income exceeded the median income for Nevada, his state of residence. Ransom reported monthly expense deductions of $4,038.01, and a monthly disposable income of $210.55. Part of his monthly expense deductions consisted of the vehicle "ownership cost" deduction which is contested in this case.

MBNA objected to confirmation of debtor's chapter 13 plan, in which Ransom proposed paying $500.00 per month over sixty months. Specifically, MBNA argued that Ransom was not devoting all of his projected disposable income to fund the plan as required by 11 U.S.C. § 1325(b)(1)(B). MBNA contended that the debtor could not take an ownership cost deduction for his vehicle if he was not making any payments on the vehicle. MBNA argued that Ransom's projected disposable income should be $681.55, which amounted to the $210.55 that he reported in disposable income, plus the contested ownership cost deduction which MBNA claimed should be disallowed.

The crux of MBNA's objection, which was adopted by all the courts in this case below, was that an ownership cost deduction could only be taken for a vehicle if the owner was making payments on the vehicle. The objecting creditor's rationale was that the Internal Revenue Manual (the "Manual") of the Internal Revenue Service ("IRS") disallows any deduction by a taxpayer above the taxpayer's actual lease or loan payment. *See,* Memorandum Denying Confirmation of Bankruptcy Judge Bruce A. Markell, App. 36; *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 806 (B.A.P. 9th Cir. 2007); *Ransom v. MBNA, Am. Bank (In re Ransom)*, 577 F.3d 1026, 1029-30 (9th Cir. 2009).

The courts below disallowed Ransom's claim of a vehicle ownership cost based on the IRS collection Manual, which allows with respect to transportation only a deduction for "the local standard or the amount actually paid, whichever is less." (Cited at *Ransom*, 380 B.R. at 806, fn. 15). Using the collection Manual as the standard, the lower courts disallowed Ransom's claimed vehicle cost deduction, despite the fact that 11 U.S.C. § 707(b)(2)(A)(ii)(I) simply states in pertinent part that, "The debtor's monthly expenses shall be the debtor's applicable expense amounts specified under the National Standards and Local Standards[.]" The statute utilizes the expense amounts specified by the IRS in its National Standards and Local Standards, but nowhere states that the expense amounts are to be construed or limited by the practices of the IRS collection Manual.

Although the Ninth Circuit rejected Ransom's claim of a vehicle cost deduction, and thus denied confirmation of his plan, the appellate court took the extraordinary step of declaring that in the final analysis, the statute setting forth the means test for expense deductions cannot be properly interpreted as it stands, and only Congress could answer the question posed by the case. The Ninth Circuit concluded:

> The "correct" answer to the question before us, which the courts have been struggling with for years – at the unnecessary cost of thousands of hours of valuable judicial time – depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary

> would be relieved of this Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in chapter 13 be allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees.

Ransom, 577 F.3d at 1031-32.

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REASONS FOR GRANTING THE PETITION

This Court has recently granted certiorari in the case of *In re Lanning,* 545 F.3d 1269 (10th Cir. 2008), *cert. granted,* 130 S. Ct. 487, 175 L. Ed. 2d 343 (2009). Certiorari was granted in *Lanning* limited to the question:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period.

Id.

Ransom is, in every respect, the sister case to *Lanning*. In each case, there is a wide split between the Circuit Courts of Appeals regarding the calculation of "projected disposable income" for the means test under 11 U.S.C. § 1325(b)(1)(B). In *Lanning*, the pivotal question is whether the bankruptcy court may consider if income and expenses during the plan period are likely to be different from those during the pre-filing period. In *Ransom*, petitioner asks this Court to consider a companion issue:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

In the event that this Court chooses to resolve the issues raised by both *Ransom* and *Lanning*, the Court will be able to resolve the lack of uniformity in interpretation of 11 U.S.C. § 1325(b)(1)(B) that has resulted in split approaches to the statute across the Federal courts.

The Ninth Circuit Court of Appeals has stated its belief that, with respect to applicable expense deductions under 11 U.S.C. § 707(b)(2)(A)(ii)(I), "The 'correct' answer to the question before us . . . depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. . . . We would hope . . . that we the judiciary would be relieved of this Sisyphean adventure by legislation[.]" *Ransom*, 577 F.3d at 1031-32.

In fact, Congress has already stated the correct answer to the question the courts have been struggling with, and the answer is contained in the plain language of the legislation. Apparently the task of interpretation appeared "Sisyphean" to the Ninth Circuit only because it refused to acknowledge that the words of the statute mean precisely what they appear to mean.

As discussed below, there is a sharp split between various Courts of Appeals on the issue before us. The Fifth, Seventh and Eighth Circuits have ruled that the plain language of the statute should prevail, and the debtor should be allowed a deduction for the ownership costs of a vehicle regardless of whether the debtor is still making loan or lease payments. By contrast, the Ninth Circuit has found that an extrinsic standard, the procedures of the IRS Manual, should be introduced to determine the proper treatment of deductions under the Bankruptcy Code. Relying on the IRS Manual, the Ninth Circuit has determined that only actual loan or lease payments can be deducted as vehicle expenses. However, the statute nowhere calls for adopting the approach to deductions of the IRS collection Manual, and this approach should be rejected.

I. SECTION 707(b)(2)(A)(ii)(I) OF THE BANKRUPTCY CODE PROVIDES FOR THE DEDUCTION OF VEHICLE OWNERSHIP COSTS REGARDLESS OF WHETHER THE DEBTOR OWNS A VEHICLE FREE AND CLEAR OF DEBT

In 2005, Congress added 11 U.S.C. § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code as part of an objective and mechanical "means test," which established a threshold beyond which abuse would be presumed. The means test ensures that a debtor's total expenses are reasonable. The threshold for presuming abuse no longer requires an individual inquiry into a debtor's most common expenses such as food, housing and transportation costs. For these types of expenses, the means test looks to the National and Local Standards used by the IRS. Specifically, § 707(b)(2)(A)(ii)(I) provides that the debtor's monthly expenses "shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards . . . issued by the Internal Revenue Service . . . ". Transportation allowances fall under the Local Standards and are divided into two components: operating costs and ownership costs. The IRS specifies amounts to be used for each component.[1]

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[1] The IRS publishes the ownership cost component of the Local Transportation Standard on a national basis, by number of cars. The operating cost component is published by number of cars and by Metropolitan Statistical Area and Census Bureau region. The Local Transportation Expense Standards may

(Continued on following page)

Unlike the Bankruptcy Code, however, the IRS treats Local Standard expenses as caps on actual expenses rather than as an allowance.

The question presented on appeal is whether a debtor who owns vehicles but does not have loan or lease payments on those vehicles is entitled to the "car ownership" allowance under § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code. In contrast to all other Courts of Appeals to consider the question, the Ninth Circuit held that cart owners with no loan or lease payments could not take an ownership deduction.

II. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT BETWEEN CIRCUITS AS TO THE INTERPRETATION OF 11 U.S.C. § 707(b)(2)(A)(ii)(I)

This Court has consistently employed a strict plain meaning rule for cases involving the Bankruptcy Code. Under the rule the plain language of the Code controls absent an absurd result. *See*, *Lamie v. U.S. Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023 (2004); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942 (2000); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026 (1989). A plain reading of the statutory language in this case would entitle all car owners, not just those with loan or

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be found at http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

lease payments, to take the ownership deduction under § 707(b)(2)(A)(ii)(I).

In *Ross-Tousey v. Neary*, 549 F.3d 1148, 1158 (7th Cir. 2008), the Seventh Circuit Court of Appeals noted that under *Ransom*, 380 B.R. at 807, the IRS collection Manual approach would be applied, and a debtor could not take any ownership deduction if he had no debt or lease payments with respect to his vehicle. However, the Seventh Circuit found that the "plain language of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute." The Seventh Circuit reversed a decision of the district court, which had disallowed a vehicle ownership deduction where the debtors were not making car payments. *United States v. Ross-Tousey*, 368 B.R. 762 (E.D. Wis. 2007).

Similarly, the Fifth Circuit Court of Appeals in *Tate v. Bolen*, 571 F.3d 423 (5th Cir. 2009), reversed the order of the district court upholding the bankruptcy court's dismissal of the chapter 7 case for abuse because the debtors claimed a vehicle ownership expense for a vehicle that was not encumbered by a debt or a lease. The Fifth Circuit concluded that "the plain language approach as set forth by the Seventh Circuit [in *Ross-Tousey v. Neary*] provides the best reading of § 707(b)(2)(A)(ii)(I)." *Tate v. Bolen*, 571 F.3d at 428. Under the means test, the debtor should be allowed to deduct a transportation ownership deduction regardless of whether the debtor has a loan or lease payment on his cars.

The Sixth Circuit Bankruptcy Appellate Panel also applied the plain language of the statute to conclude that all debtors who own vehicles may take the ownership deduction regardless of whether the debtors make loan or lease payments on those vehicles. *See, Hildrebrand v. Kimbro*, 389 B.R. 518 (B.A.P. 6th Cir. 2008). In *Kimbro,* the Sixth Circuit B.A.P. affirmed that statutory interpretation should rely on the plain language of the legislation:

> The plain language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) states that a debtor's means test deductions "shall be" the amounts specified in the local standards and there is nothing explicit in that statutory language that requires a debtor to have a debt or lease payment to deduct a vehicle ownership expense in the bankruptcy means test.

Id. at 523. The Sixth Circuit Panel relied on the straightforward approach to interpretation set forth in *Lamie*:

> The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statutes. It is well established that when the statute's language is plain, the sole function of the court – at least where the disposition required by the text is not absurd – is to enforce it according to its terms. *Lamie v. U.S. Trustee, supra,* 540 U.S. at 534 (citations omitted).

Id. at 522-23.

The Eighth Circuit Court of Appeals, in *eCast Settlement Corporation v. Washburn*, 579 F.3d 934 (8th Cir. 2009), abrogated an Eighth Circuit Bankruptcy Appellate Panel decision relied by the Ninth Circuit in its opinion.[2] The Eighth Circuit held that "a debtor need not in fact owe a vehicle loan or lease payment to claim a vehicle-ownership expense in accordance with § 707(b)(2)(A)(ii)(I)." *Id.* at 940. The Eighth Circuit adopted the analyses of the Fifth and Seventh Circuit Courts of Appeals on this issue, and held that "the plain language approach adopted by the Fifth and Seventh Circuits results in the proper interpretation of 11 U.S.C. § 707(b)(2)(A)(ii)(I)." *Id.* at 937.

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[2] The Eighth Circuit Bankruptcy Appellate Panel decision abrogated by the Eighth Circuit Court of Appeals was *Babin v. Wilson*, 383 B.R. 729 (B.A.P. 8th Cir. 2008). The Ninth Circuit, in *Ransom*, 577 F.3d at 1029, adopting the approach of the Eighth Circuit B.A.P. set forth in *Wilson*, stated that "roughly half of the courts to address the issue, including our BAP and the Eighth Circuit BAP, have found a debtor is entitled to the ownership cost deduction only if the debtor actually has loan or lease payments on a vehicle."

A. The Ninth Circuit Incorrectly Rejected the Plain Language of the Statute to the Effect that Applicable Monthly Expenses Are Pegged to National and Local Standards, Not Determined by Actual Expenditures.

The language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) is clear. It provides that the debtor's monthly expenses "**shall be** the debtor's applicable monthly expense **amounts specified** under the National Standards and Local Standards . . . issued by the Internal Revenue Service[.] (emphasis added)." The statutory language of § 707(b)(2)(A)(ii)(I) allows no discretion. *See, In re Phillips,* 382 B.R. 153 (Bankr. D. Mass. 2008). By stating that the debtor "shall" use as his or her expenses the "amounts specified under the National Standards and Local Standards," Congress created a fixed allowance for debtors in the amounts specified, not merely a cap of the debtor's actual expenses. *See,* Eugene R. Wedoff, *Means Testing in the New 707(b),* 79 Am. Bankr. L.J. 231, 257-58 (2005) ("the statute makes no provision for reducing the specified amounts to the debtor's actual expenses – a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less"). *See also,* 6 *Collier on Bankruptcy* ¶ 707.05(2)(c)(i) (A. Resnick and H. Sommer, eds., 15th ed. Rev. 2005) ("The better view is that, because the language refers to deducting the 'amount specified' in the standards, and not actual expenses, the ownership allowance specified in the standards is the minimum amount to be deducted").

Congress drew a distinction in the statute between "applicable" expenses on one hand and "actual" expenses on the other. As the Eighth Circuit Court of Appeals states in *Ross-Tousey,* 549 F.3d at 1157, "In order to give effect to all the words of the statute, the term 'applicable monthly expense amounts' cannot mean the same thing as 'actual monthly expenses.'"

The bankruptcy court in *In re Farrar-Johnson,* 353 B.R. 224 (Bankr. N.D. Ill. 2006) drew an analogous distinction between "applicable" and "actual" expenses in interpreting 11 U.S.C. § 707(b)(2)(A)(ii)(I). There, the debtors claim a monthly housing expense, even though the debtors were provided housing on a military base. The court reasoned that, "By reference to section 707(b)(2)(A), section 1325(b)(3) also lets an above-median debtor claim a housing expense on Form B22C even if he has no housing expense." *Id.* at 227. The court held that the debtors could properly claim a housing expense as the "reasonably necessary" amount on Form B22C, and denied the trustee's motion to dismiss.

The *Farrar-Johnson* court clarified that an "applicable" expense can be claimed on Form B22C even if no "actual" expense was incurred:

> The debtors were entitled to claim that expense whether they had it or not. Section 707(b)(2)(A)(ii)(I) permits a debtor to claim

> "the applicable monthly expense amount" under the Local Standards. Read in isolation, "applicable" is ambiguous, meaning simply: "That can be applied; appropriate." *American Heritage Dictionary* 89 (3rd ed. 1996); *see also Webster's Third New Int'l Dictionary* 105 (1981) (defining "applicable" as "capable of being applied: having relevance"). An expense could be "appropriate" for a debtor to claim because he actually incurs that expense. It could also be "appropriate" to claim because he lives in a certain state and county and has a household of a certain size, putting him in the right box on the Local Standards chart.

Id. at 230. The court pointed out that "applicable" expenses refer to a standard published by the government, and do not entail an analysis of "appropriate" expense or "actual" expense:

> Statutory terms . . . are never read in isolation; they are read in the context in which they appear (citation omitted). Section 707(b)(2)(A)(ii)(I) defines monthly expenses not only as a debtor's "*applicable* monthly expense amounts" under the "National and Local Standards" but also as the debtor's "*actual* monthly expenses" for the categories the IRS specifies as "Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). Congress drew a distinction in the statute between "applicable" expenses on the one hand and "actual" expenses on the other. "Other Necessary Expenses" must be the debtor's "actual" expenses. Expenses under the "Local Standards," in contrast,

> need only be those "applicable" to the debtor – because of where he lives and how large his household is. It makes no difference whether he "actually" has them. *See* Wedoff, *supra,* at 256 (noting that "a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less").

Id. at 230-31.

In *Ross-Tousey,* the Court of the Appeals for the Seventh Circuit distinguished between cases adopting the Internal Revenue Service Manual as the standard for reading the statute, such as *Ransom,* 380 B.R. at 808, and those holding that a debtor who owns his car outright may take the deduction, such as *Kimbro, supra,* 389 B.R. at 532. The Seventh Circuit found that courts allowing the deduction were adhering strictly to the statutory language, which calls for defining applicable expenses as those set forth in the IRS Local Standards:

> [C]ourts in the plain language camp argue that "applicable" refers to the selection of an expense amount corresponding to the appropriate geographic region and number of vehicles owned by the debtor. *See, e.g., In re Grunert,* 353 B.R. 591, 592 (Bankr. E.D. Wis. 2007); *In re McIvor,* No. 06-42566, 2006 Bankr. LEXIS 3861, 2006 WL 3949172, *4 (Bankr. E.D. Mich. Nov. 15, 2006) ("the word 'applicable,' in the context of 707(b)(2)(A)(ii)(I) means the applicable Local Standards as it pertains to the area in which the debtor

> resides"); *In re Smith*, No. 06-30261, 2007 Bankr. LEXIS 2173, 2007 WL 1836874, *8 (Bankr. N.D. Ohio June 22, 2007) ("If the debtor has only one car, the 'applicable' expense is the one found in the first column [of the Standard for Ownership Costs], and if a debtor has a second vehicle, the amount in the second column is also 'applicable.'"). In other words, under the plain language approach, the Local Standard vehicle ownership deduction "applies" to the debtor by virtue of his geographic region and number of cars, regardless of whether that deduction is an actual expenses.

Ross-Tousey, 549 F.3d at 1157-58. The Seventh Circuit sided with the courts interpreting "applicable" expenses in § 707(b)(2)(A)(ii)(I) according to the plain language of the statute:

> We are persuaded that the plain language view of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute. In order to give effect to all the words of the statute, the term "applicable monthly expense amounts" cannot mean the same thing as "actual monthly expenses." Under the statute, a debtor's "actual monthly expenses" are only relevant with regard to the IRS's "Other Necessary Expenses;" they are not relevant to deductions taken under the Local Standards, including the transportation ownership deduction. Since "applicable" cannot be synonymous with "actual," applicable cannot reference what the debtor's actual expense is

> for a category, as courts favoring the IRM [Internal Revenue Manual] approach would interpret the word. We conclude that the better interpretation of "applicable" is that it references the selection of the debtor's geographic region and number of cars.

Id. at 1158.

Put another way, the *Ransom* line of decisions is distinguished by the fact that the Ninth Circuit has chosen *not* to make the plain language of the statute the determining factor in its interpretation.

B. The Court of Appeals for the Ninth Circuit Has Erroneously Imported the IRS Methodology Into the Bankruptcy Code.

Congress did not incorporate the language of the Internal Revenue Manual ("Manual" or "IRM") into 11 U.S.C. § 707(b)(2)(A)(ii)(I), although it could easily have done so if it sought to incorporate IRS collection methodology into the interpretation of the means test.

Nonetheless, the *Ransom* court adopts the "IRM approach," which relies on the IRS's interpretation of which transportation expenses are deductible:

> The IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, provide: "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard

> is used to figure the allowable transportation expense." *See* Collection Financial Standards (March 1, 2009) (footnote omitted). The IRM similarly requires a taxpayer to have a loan or lease payment to qualify for the ownership cost deduction. *See* Internal Revenue Service Manual, Financial Analysis Handbook, Pt. 5, ch. 15, § 5.15.1.9 (I.B) (May 29, 2008) (footnote omitted).

Ransom, 577 F.3d at 1030. The Ninth Circuit follows the IRM approach because of a belief that the IRS collection methodology best implements Congress's intent:

> This approach also is arguably supported by Congress's intent in implementing the means testing as part of BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] – "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. 109-31(I), at 1, *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

Id.

As the Court of Appeals for the Seventh Circuit pointed out in *Ross-Tousey,* the language of § 707(b)(2)(A)(ii)(I) contains no reference to using an IRS method for determining whether deductions are allowable:

> [W]hile the IRM provides a useful methodology to IRS agents for determining a taxpayer's ability to pay the IRS, we agree with other plain language courts that there

> is no indication that Congress intended that methodology to be used in conducting the means test. As an initial matter, section 707(b)(2)(A)(ii)(I) makes reference only to the "amounts specified" in the Local Standards; the statute does not incorporate the IRM or the Financial Analysis Handbook, or even refer to them. *See* § 707(b)(2)(A)(ii)(I) (making no reference to the IRM, the Financial Analysis Handbook or their methodologies).

Ross-Tousey, 549 F.3d at 1159.

The *Ross-Tousey* court found no support for the contention, in *Ransom,* that using the IRM approach is called for by Congressional intent. As the Seventh Circuit Court of Appeals put it:

> The legislative history of section 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology was deliberate . . . A prior version of the BAPCPA which was never passed defined "projected monthly net income" under the means test to require a calculation of expenses as follows:
>
> > (A) the expense allowances under the applicable National Standards, Local Standards, and Other Necessary Expenses allowance (excluding pay-ments for debts) for the debtor . . . in the area in which the debtor resides *as determined under the Internal Revenue financial analysis* for expenses in effect as of the date of the order for relief.

> H.R. 3150, 105th Congress (1998) (emphasis added). The phrase "as determined under the Internal Revenue Service financial analysis" was later removed and replaced by the current language, which states that the debtor should deduct the "applicable monthly expense amounts specified under the National and Local Standards (citations omitted). Because the statute incorporates only the "amounts" of the Local Standards and does not incorporate IRM procedures or methodology, and because the legislative history of the statute indicates that Congress intentionally omitted any reference to IRM financial analysis, we believe that using the IRM methodology in conducting the means test is misguided (citations omitted).

Id. at 1159-60.

The Seventh Circuit also found it inconsistent to utilize IRM methods, which allow the revenue officer substantial discretion, with respect to a means test that aims for a "uniform, bright-line test" that eliminates judicial discretion. *Id.* at 1160.

C. The Ninth Circuit Has Wrongly Concluded that There Are No Ownership Costs Associated with a Vehicle aside from Loan and Lease Payments.

In *Ransom,* the Court of the Appeals for the Ninth Circuit has dismissed as "ironic" and "fictitious" the concept of ownership expenses other than debt payments:

> An "ownership cost" is not an "expense" – either actual or applicable – if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor.

Ransom, 577 F.3d at 1030. As the Ninth Circuit Bankruptcy Appellate Panel put it, "we believe the statute can only be interpreted to 'apply' expense standards in cases where debtors in fact pay such expenses." *Ransom,* 380 B.R. at 808.

However, the *Ransom* court failed to acknowledge that there are vehicle ownership costs in addition to debt payments. As the Court of Appeals for the Seventh Circuit stated in *Ross-Tousey,* 549 F.3d at 1160, there are costs of vehicle ownership aside from loan payments: "These non-debt costs include depreciation, insurance, licensing fees and taxes." Replacement costs are another ownership expense, and the ownership cost deduction takes into account the expenses incurred by debtors to replace their vehicles. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

The Ninth Circuit chose to interpret the statute to achieve "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom,* 577 F.3d at 1031, citing the opinion of the Ninth Circuit Bankruptcy Appellate Panel, *Ransom,* 380 B.R. at 808. However, the Ninth Circuit's strategy appears to be ineffectual. Debtors can make up for the lack of a car ownership deduction by taking on new secured debt and purchasing additional vehicles. In this way, unsecured creditors would still be denied repayment. In the alternative, debtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

Rather than stretching 11 U.S.C. § 707(b)(2)(A)(ii)(I) to maximize debt collection, courts should adhere to the statute's plain meaning. The debtor's monthly transportation expenses for vehicles are properly calculated as the expense amounts specified under the National Standards and Local Standards as the transportation ownership deduction.

◆

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted to review the judgment below.

Respectfully submitted,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the Matter of:
JASON M. RANSOM,
Debtor,

JASON M. RANSOM,
Appellant,
v.
MBNA, AMERICA BANK, N.A.,
Appellee,
EXECUTIVE OFFICE OF
UNITED STATES TRUSTEE,
Trustee.

No. 08-15066

BAP No.
NV-07-01254-DBaMo

OPINION

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Baum, Montali, and Dunn,
Bankruptcy Judges, Presiding

Argued and Submitted
June 9, 2009 – San Francisco, California

Filed August 14, 2009

Before: Stephen S. Trott, M. Margaret McKeown and Sandra S. Ikuta, Circuit Judges.

Opinion by Judge Trott

COUNSEL

Christopher P. Burke, Chris P. Burke & Associates, Las Vegas, Nevada, for the appellant.

Jeremy T. Bergstrom, Miles, Bauer, Bergstrom & Winters LLP, Henderson, Nevada; and William Andrew McNeal, Becket & Lee LLP, Malvern, Pennsylvania, for appellee MBNA, America Bank, N.A.

Catherine Bentley Sevcenko, Executive Office for the United States Trustees, for amicus curiae, United States of America.

Tara Twomey, San Jose, California, for amicus curiae National Association of Consumer Bankruptcy Attorneys.

OPINION

TROTT, Judge:

Does an above-median income debtor seeking bankruptcy relief under chapter 13 get to deduct from his projected disposable income (that otherwise would be available to unsecured creditors) a vehicle "ownership cost" for a vehicle he owns free and clear? Based upon our interpretation of the controlling statute, 11 U.S.C. § 707(b)(2)(A)(ii)(I), our answer is "no." Thus, we agree with the decision of our Bankruptcy Appellate Panel ("BAP"), *see Ransom v. MBNA Am. Bank, N.A. (In re Ransom)*, 380 B.R. 799 (B.A.P. 9th Cir. 2007), and affirm the decision of the bankruptcy court.

I.

The facts in this case are undisputed and are taken from our BAP's decision. The debtor, Jason Ransom, filed for chapter 13 bankruptcy relief. Among his assets, he scheduled a 2004 Toyota Camry he owns free and clear of any loans or other encumbrances. In his liabilities, he scheduled a total of $82,542.93 in general unsecured claims, including a claim held by MBNA America Bank ("MBNA") in the amount of $32,896.73.

On his Statement of Current Monthly Income ("Form B22C"), Ransom reported a current monthly income of $4,248.56, and an annualized income of $50,982.72, which put him above the median income for his household size in his state of residence, Nevada. He claimed monthly expense deductions – including the vehicle "ownership cost" deduction at issue in this case – in the amount of $4,038.01, and a resulting monthly disposable income of $210.55.

In his chapter 13 plan, Ransom proposed paying $500.00 per month over sixty months, providing approximately a 25% distribution on general unsecured claims. MBNA objected to confirmation of the plan, arguing Ransom was not devoting all of his projected disposable income to fund the plan as required under 11 U.S.C. § 1325(b)(1)(B). Specifically, MBNA argued that Ransom could deduct a vehicle ownership cost only if he actually was making lease or loan payments on the vehicle and, because Ransom owned his vehicle free and clear of encumbrances and lease obligations, he was not entitled to the vehicle ownership cost deduction. Thus, MBNA argued, Ransom's projected disposable income should be $681.55 (the $210.55 he reported in disposable income plus $471.00, the amount of the vehicle ownership cost deduction to which MBNA objected).

The bankruptcy court agreed with MBNA, holding that Ransom could deduct a vehicle ownership cost only if he currently was making loan or lease payments on the vehicle. The bankruptcy court therefore entered an order denying without prejudice confirmation of the plan.

Ransom sought and obtained leave to appeal the bankruptcy court's interlocutory order to our BAP. BAP affirmed the bankruptcy court. *See Ransom*, 380 B.R. at 808-09. Concurrently with its opinion affirming the bankruptcy court, BAP certified its disposition of the case to this circuit for possible review of a nonfinal order. *See id.* at 809 n.21. This circuit authorized this interlocutory appeal to go forward.

II.

A court may not approve a chapter 13 plan if the holder of an allowed unsecured claim (here, MBNA) objects to confirmation of the plan *unless* the debtor demonstrates (1) "the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim"; or (2) "the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(A), (B). Ransom seeks to defeat MBNA's objection to his plan under the second option by demonstrating that his plan provides that all of his projected "disposable income" will be applied to make payments to unsecured creditors.

"Disposable income" is defined as "current monthly income received by the debtor . . . less amounts reasonably necessary to be expended . . . for the maintenance and support of the debtor. . . ." 11 U.S.C. § 1325(b)(2)(A)(i). Because Ransom is an above-median income debtor, the "amounts reasonably necessary to be expended," is to be determined "in accordance with" the means test set forth in 11 U.S.C. § 707(b)(2). *See* 11 U.S.C. § 1325(b)(3).

Under the "means test" in § 707(b)(2), a debtor's monthly expenses

> shall be the debtor's *applicable* monthly expense amounts specified under the National Standards and Local Standards, and the debtor's *actual* monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides. . . . Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.

11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added).

The National Standards and Local Standards referenced in § 707(b)(2)(A)(ii)(I) are located in the Internal Revenue Service's ("IRS") Financial Analysis Handbook, which is, in turn, contained in the IRS's Internal Revenue Manual ("IRM"). The IRS uses the IRM in determining a taxpayer's ability to pay a delinquent tax liability. *See In re Fowler*, 349 B.R. 414, 416 (Bankr. D. Del. 2006).

The IRS's Local Standards include allowable transportation expenses. These transportation expenses are broken down into two categories: (1) operating costs and public transportation costs, and (2) "ownership costs."[1] It is the "ownership cost" deduction that is at issue here. Specifically, at issue is whether the ownership cost deduction is "applicable" under § 707(b)(2)(A)(ii)(I), and therefore allowed, to a debtor who owns his vehicle free and clear and thus does not have any loan or lease payments on his vehicle.

As described by our BAP, there exists "a significant split in authority" on this issue. *See Ransom*, 380 B.R. at 803-06. Some courts have allowed the deduction of an "ownership cost" for a vehicle that is subject to neither secured debt nor a lease; other courts have not. Most recently, two of our sister circuits have joined the camp allowing the deduction, which puts us in the uncomfortable position of disagreeing with them. *See Tate v. Bolen (In re Tate)*, 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148 (7th Cir. 2008).

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[1] The Local Standards for Transportation for the West Census Region (which includes Nevada), in effect when Ransom filed, can be found on the U.S. Trustee's website at: http://www.usdoj.gov/ust/eo/bapcpa/20051017/bci_data/IRS_Trans_Exp_Stds_WE.htm.

In *Ross-Tousey*, the Seventh Circuit adopted what has been referred to as the "plain language approach," and held that a vehicle not encumbered by a debt or lease qualified nonetheless for the "ownership cost" deduction. *Ross-Tousey*, 549 F.3d at 1157-58. The court was persuaded that § 707(b)(2)(A)(ii)(I)'s use of the adjective "applicable" – rather than "actual" – in relation to the "ownership cost" deduction refers "to the selection of an expense amount corresponding to the appropriate geographic region and number of vehicles owned by the debtor." *Id.* at 1157. "In other words, under [this] approach, the Local Standard vehicle ownership deduction 'applies' to the debtor by virtue of his geographic region and number of cars, regardless of whether that deduction is an actual expense[ ]." *Id.* at 1157-58.

In *Tate*, the Fifth Circuit found the "plain language approach," as set forth by the Seventh Circuit in Ross-Tousey, to provide the "best reading of § 707(b)(2)(A)(ii)(I)," and therefore also adopted that approach. *Tate*, 571 F.3d at 427.

However, roughly half of the courts to address the issue, including our BAP and the Eighth Circuit BAP, have found a debtor is entitled to the ownership

cost deduction only if the debtor actually has loan or lease payments on a vehicle. *See, e.g., Ransom*, 380 B.R. at 809; *Babin v. Wilson (In re Wilson)*, 383 B.R. 729, 734 (B.A.P. 8th Cir. 2008); *In re Coffin*, 396 B.R. 804, 809 (Bankr. D. Me. 2008); *Grossman v. Sawdy*, 384 B.R. 199, 203, 205 (E.D. Wis. 2008); *In re Slusher*, 359 B.R. 290, 308-09 (Bankr. D. Nev. 2007). These courts reason that the ownership cost deduction is "applicable" only if the debtor is in fact incurring such an expense in the form of a loan or lease payment on a vehicle, i.e., that "applicable" means that a debtor actually is making a loan or lease payment. *See, e.g., Wilson*, 383 B.R. at 732-33 ("[A] vehicle ownership expense is only applicable if a debtor is in fact incurring such an expense."); *Grossman*, 384 B.R. at 204 ("[T]he word 'applicable' is meant to modify the term 'monthly expenses.' Therefore, the deduction is to be used if and only if the debtor actually has the monthly expense of an actual car payment." (citation omitted)). In other words, these courts equate "ownership cost" with "loan or lease payments."

In reaching the conclusion that a debtor is entitled to the ownership cost deduction only if the debtor actually has loan or lease payments on a vehicle, some courts have adopted what has been referred to as the "IRM approach," which relies on the IRS's interpretation of "applicable" contained in the IRM. The courts employing the IRM approach reason that because Congress incorporated the IRS National and Local Standards into § 707(b)(2)(A)(ii)(I), it must have intended "courts to look at how the IRS defines these categories, and how the IRS calculates those expenses." *Slusher*, 359 B.R. at 309; *see Grossman*, 384 B.R. at 204 (relying on the IRS's interpretation of the Local and National Standards in concluding that a debtor must have a car payment to take the ownership cost deduction); *Wilson*, 383 B.R. at 733 (same).

> Under this reading, "actual" and "applicable" do mean two different things – one is a limitless deduction within the specified categories of Other Necessary Expenses, and the other is a deduction limited to the amount and type specified by the IRS. Had Congress intended to indiscriminately allow all expense amounts specified in the National and Local Standards, it would have written 707(b)(2)(A)(ii)(I) to read, "The debtor's monthly expenses shall be the monthly expense amounts specified under the National Standards and Local Standards . . . " rather than "The debtor's monthly expenses shall be *the debtor's applicable* monthly expense amounts specified under the National and Local Standards. . . ." This distinction may not appear from the dictionary definitions of both terms, but it did, and does, belong to the IRS' historical and practical use of those standards at the time Congress adopted BAPCPA. In referring to such specialized standards, it would be quite odd if Congress intended to preclude courts from examining the context in which the authoring agency, the IRS, used and employed those standards.

Slusher, 359 B.R. at 308-09 (citation omitted) (emphasis in original).

The IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, provide: "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense." *See* IRS Collection Financial Standards (March 1, 2009).[2] The IRM similarly requires a taxpayer to have a loan or lease payment to qualify for the ownership cost deduction. *See* Internal Revenue Service Manual, Financial Analysis Handbook, Pt. 5, ch. 15, § 5.15.1.9(1.B) (May 29, 2008).[3]

This approach also is arguably supported by Congress's intent in implementing the means testing as part of BAPCPA – "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. 109-31(I), at 1, *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

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[2] The current IRS Collection Financial Standards for Local Transportation can be found at: http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

[3] The portion of the current Internal Revenue Service Manual, Financial Analysis Handbook, discussing transportation cost deductions can be found at: http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1005.

III.

As did our BAP, we decide this issue not on the IRS's manual, but instead on the "statutory language, plainly read," *Ransom*, 380 B.R. at 806 n. 18, which we believe does not allow a debtor to deduct an "ownership cost" (as distinct from an "operating cost") that the debtor does not have. An "ownership cost" is not an "expense" – either actual or applicable – if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor.

Accordingly, we adopt the cogent reasoning of our BAP, as follows:

> Congress has deemed the expense of owning a car to be a basic expense that debtors can deduct in calculating what they can afford to pay to their creditors. However, in making that calculation, what is important is the payments that debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors.
>
> The statute is only concerned about protecting the debtor's ability to continue owning a car, and if the debtor *already* owns the car, the debtor is adequately protected. . . . When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors.

Section 707(b)(2)(A)(ii)(I) provides, in relevant part, that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under . . . the Local Standards." As set forth in the statute, the adjective "applicable" modifies the meaning of the noun "monthly expense amounts;" it indicates that the deduction of the monthly expense amount specified under the Local Standard for the expense becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense.

The ordinary, common meaning of "applicable" further impels us to this conclusion. "Applicable," in its ordinary sense, means "capable of or suitable for being applied." Merriam-Webster's Collegiate Dictionary 60 (11th ed. 2005). Given the ordinary sense of the term "applicable," how is the vehicle ownership expense allowance *capable of being applied* to the debtor if he does not make any lease or loan payments on the vehicle? In other words, how can the debtor assert a deduction for an expense he does not have? If we granted the debtor such an allowance, we would be reading "applicable" right out of the Bankruptcy Code.

The debtor also argues for allowance of the vehicle ownership expense deduction on equitable grounds. He claims that, due to the age of the car, the likelihood of major repairs and the costs of such repairs will increase. He further contends that the allowable operating costs under the Local Standards do not take into account the costs of major repairs.

However, as the court in [*In re Carlin*, 348 B.R. 795 (Bankr. D. Or. 2006)] noted:

> Numerous safeguards are in place to protect both debtors and creditors. Debtors who own old or high mileage cars "free and clear," are entitled to an extra $200 per month operating expense. Also, a "free and clear" owner is not "stuck" with the vehicle operating expenses allowed under the IRS Standards. Section 707(b)(2)(B) is also available for "above the median" Chapter 13 debtors. Section 707(b)(2)(B), allows additional expenses based on "special circumstances."

348 B.R. at 798 (citations omitted). We agree with the court in *Carlin* and conclude that the debtor's appeal to equity is unavailing.

Further, our interpretation of § 707(b)(2)(A)(ii)(I) has a substantive effect that is consistent with the underlying goals of BAPCPA. *Cf.* [*United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988)]. To interpret the statute otherwise is counterintuitive to one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible. When viewed within the larger context of BAPCPA, we believe the statute can only be

> interpreted to "apply" expense standards in cases where debtors in fact pay such expenses.

Ransom, 380 B.R. at 807-08 (footnote and some citations omitted).

IV.

The "correct" answer to the question before us, which the courts have been struggling with for years – at the unnecessary cost of thousands of hours of valuable judicial time – depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary would be relieved of this Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in chapter 13 be allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees.

AFFIRMED.

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re:

JASON M. RANSOM,

Debtor.

JASON M. RANSOM,

Appellant,

v.

MBNA AMERICA BANK, N.A.,

Appellee.

BAP No.
NV-07-1254-DBaMo
Bk. No.
06-11566-BAM

OPINION

(Filed Dec. 27, 2007)

Argued by Video Conference and Submitted on
November 28, 2007

Filed – December 27, 2007.

Appeal from the United States
Bankruptcy Court for the District of Nevada

Hon. Bruce A. Markell,
Bankruptcy Judge, Presiding.

Before: DUNN, BAUM[1] and MONTALI, Bankruptcy Judges.

DUNN, Bankruptcy Judge:

In this interlocutory appeal, we face another interesting issue of statutory construction under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), this time concerning § 707(b)(2)(A)(ii)(I).[2] Specifically, in calculating the projected disposable income of an above-median income debtor for purposes of chapter 13 plan confirmation, we must determine whether § 707(b)(2)(A)(ii)(I) permits the debtor to deduct a vehicle ownership expense for a vehicle owned free and clear of any liens and encumbrances. Based on the language of § 707(b)(2)(A)(ii)(I), we conclude that the debtor cannot take such a deduction and AFFIRM.

I. FACTS

The facts are undisputed. On July 5, 2006, the debtor, Jason Ransom, filed for bankruptcy relief under chapter 13. Among his assets, he scheduled a 2004 Toyota Camry, which had no liens or encumbrances against it. Among his liabilities, he scheduled a total of $82,542.93 in general unsecured claims, with MBNA America Bank ("MBNA") holding a claim of $32,896.73. The debtor reported net monthly income of $504.15, based on a monthly income of $2,806.84, after payroll deductions, per Schedule I, and monthly expenses of $2,302.69, per Schedule J.

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[1] Hon. Redfield T. Baum, Sr., Chief Judge of the U.S. Bankruptcy Court for the District of Arizona, sitting by designation.

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated as of October 17, 2005, the effective date of most of the provisions of BAPCPA, Pub. L. 109-8, 119 Stat. 23.

On his Statement of Current Monthly Income ("Form B22C"), the debtor reported current monthly income of $4,248.56 and an annualized income of $50,982.72, which was above the median income for a Nevada household of one.[3] On his Form B22C, the debtor listed deductions totaling $4,038.01, including a $471 vehicle ownership expense. Based on these deductions and his current monthly income, the debtor calculated $210.55 in monthly disposable income.

In his chapter 13 plan, the debtor proposed to pay $500 per month over 60 months, providing approximately a 25% distribution on general unsecured claims.

MBNA objected to confirmation of the plan, arguing that the debtor was not devoting all of his projected disposable income to fund the plan pursuant to § 1325(b)(1)(B).[4] As the debtor's income was above the median, § 707(b)(2)(A)(ii)(I), which incorporates expenses specified in the Internal Revenue Service ("IRS") Local Standards, sets the standards for determining his reasonably necessary expenses for purposes of calculating his disposable income.

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[3] At the time, the median income in Nevada for a household of one was $38,506.

Turning to the IRS's Internal Revenue Manual ("Manual") for guidance,[5] MBNA contended that the debtor can only deduct a vehicle ownership expense when he makes lease or loan payments on the vehicle. As the debtor owned the car free of encumbrances or lease obligations, he could not deduct the $471 vehicle ownership expense from his current monthly income. Thus, MBNA concluded, the debtor's projected disposable income should be $681.55,[6] all of which should be used to fund the plan.

The bankruptcy court agreed with MBNA, relying on its published decision, *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007).[7] On June 6, 2007, the

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[4] The chapter 13 trustee and Chase Manhattan Bank ("Chase"), another general unsecured creditor, objected to confirmation of the plan as well, advancing the same arguments as MBNA. (In fact, Chase filed a joint objection with MBNA.) Neither the trustee nor Chase is participating in the appeal before us.

[5] MBNA referenced Part 5, Chapter 15, Section 1 of the Manual, entitled "Financial Analysis Handbook."

[6] $210.55 in disposable income plus $471, the amount of the vehicle ownership expense deduction to which MBNA objected.

[7] In *Slusher*, the bankruptcy court held that, based on the definitions and procedures set out in the Manual, the debtor

(Continued on following page)

bankruptcy court issued its memorandum decision and entered an order denying confirmation of the plan without prejudice.

The debtor timely moved for leave to appeal the bankruptcy court's interlocutory order. We granted leave to appeal.

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(L). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUE

Whether, in determining projected disposable income for purposes of chapter 13 plan confirmation, the debtor can deduct a vehicle ownership expense pursuant to § 707(b)(2)(A)(ii)(I), notwithstanding that the debtor owns the vehicle free and clear of any liens or encumbrances.

IV. STANDARDS OF REVIEW

We review de novo a bankruptcy court's conclusions of law. *Nichols v. Birdsell,* 491 F.3d 987, 989 (9th Cir. 2007). We review de novo issues of statutory construction, including a bankruptcy court's

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could deduct a vehicle ownership expense only if he currently made a lease or loan payment on the vehicle. 359 B.R. at 305-10.

interpretation of the Bankruptcy Code. *Towers v. United States (In re Pacific-Atlantic Trading Co.),* 64 F.3d 1292, 1297 (9th Cir. 1995); *Trejos v. VW Credit, Inc. (In re Trejos),* 374 B.R. 210, 214 (9th Cir. BAP 2007).

V. DISCUSSION

A. Statutory Context

As observed by nearly all of the courts addressing this issue, there is a significant split in authority. We are asked in this appeal to cast our lot with one side or the other. Before we do, we first must set out the statutory context.

Under § 1325(b)(1)(B), if an unsecured creditor objects to confirmation of a chapter 13 plan which does not provide for payment of all allowed unsecured claims in full, the court may not confirm the plan unless the plan provides that all of the debtor's projected disposable income received during the applicable commitment period will be applied to pay unsecured creditors. Under § 1325(b)(2)-(3), for purposes of calculating disposable income, if the debtor's current monthly income (multiplied by twelve) is above the median income for households of like size in the forum state, then the debtor's reasonably necessary expenses are those allowed under § 707(b)(2)(A) and (B).

Section 707(b)(2)(A)(ii)(I) provides, in relevant part:

> The debtor's monthly expenses shall be the debtor's *applicable monthly expense amounts specified under the National Standards and Local Standards,* and the debtor's *actual monthly expenses for the categories specified as Other Necessary Expenses* issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief. . . . (emphasis added).

The Local Standards, originally compiled by the IRS, consist of allowances in specific amounts for certain expenses within two general categories, "Housing and Utilities" and "Transportation."[8] The category, "Transportation," is broken down further into two subcategories, "Operating Costs and Public Transportation Costs" and "Ownership Costs."

Both subcategories set out specific amounts of expenses allowable to the debtor, depending on the region where the debtor resides and/or the number of cars the debtor possesses. Neither subcategory, as set forth on the United States Trustee's website, includes an explanation or a definition of "ownership costs" or "operating costs and public transportation costs."

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[8] The Office of the United States Trustee provides the National Standards and Local Standards on its website, http://www.usdoj.gov/ust/eo/bapcpa/20051017/meanstesting.htm.

Other Necessary Expenses,[9] as identified by the IRS, include charitable contributions and repayment of student loans. Form B22C enumerates some, but not all, of the expenses identified by the IRS in the Manual.[10]

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[9] Section § 707(b)(2)(A)(ii)(I) mentions disability insurance, health savings account expenses, and "reasonably necessary" health insurance as Other Necessary Expenses. Form B22C enumerates the following as Other Necessary Expenses: taxes, mandatory payroll deductions, life insurance, court-ordered payments, child care, health care, telecommunication services, and education for employment or for a physically or mentally challenged child. The Manual further lists accounting and legal fees, and charitable contributions as Other Necessary Expenses.

[10] The IRS provides its Manual at its website, http://www.irs.gov/irm/index.html. Part 5, Chapter 15, Section 1.7, Subsection 4.B of the Manual provides:

> Transportation – The transportation standards consist of nationwide figures for loan or lease payments referred to as ownership cost, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs were derived from BLS [Bureau of Labor Statistics] data. If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense. Under ownership costs, separate caps are provided for the first car and second car. If the taxpayer does not own a car a standard public transportation amount is allowed.

B. Summary of the Existing Case Law

Most courts on either side of the split base their respective positions on a plain meaning interpretation of § 707(b)(2)(A)(ii)(I). *See In re Sawdy,* 362 B.R. 898, 903 (Bankr. E.D. Wis. 2007); *In re Armstrong,* 370 B.R. 323, 327 (Bankr. E.D. Wash. 2007). The meaning of the phrase, "the debtor's applicable monthly expense amounts specified under the Local Standards," is the point of division between the courts that so far have addressed this issue.[11]

1. Courts allowing the vehicle ownership expense deduction

The courts allowing the deduction draw a sharp distinction between the meaning of the words "applicable" and "actual." For these courts, "applicable" is not synonymous with "actual." *See, e.g., In re Farrar-Johnson,* 353 B.R. 224, 230-31 (Bankr. N.D. Ill. 2006); *In re Fowler,* 349 B.R. 414, 418 (Bankr. D. Del. 2006); *In re Demonica,* 345 B.R. 895, 902 (Bankr. N.D. Ill. 2006); *In re Enright,* No. 06-10747, 2007 WL 748432 at *5 (Bankr. M.D.N.C. March 6, 2007). They reason that "applicable" and "actual" must each have its own distinct meaning because each term, used in the same sentence, modifies a particular expense category. *Enright,* 2007 WL 748432 at *5.

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[11] Although the courts are split as to whether a debtor can or cannot take the deduction, courts within each line of authority proffer their own distinct rationales or nuances on the prevailing rationales. *See Sawdy,* 362 B.R. at 903-13 (identifying six different rationales advanced by the courts to allow or disallow the deduction). At this time, based on our research, there are over fifty decisions discussing this issue, many of which set forth variations on the prevailing rationales. We mention here only a number of samples of the most typical and the most persuasive.

These courts infer that the use of these two terms "indicates Congressional intent to *distinguish* between the two classes of expenses." *In re Swan,* 368 B.R. 12, 18 (Bankr. N.D. Cal. 2007) (emphasis added). *Accord In re Chamberlain,* 369 B.R. 519, 524-25 (Bankr. D. Ariz. 2007); *In re Billie,* 367 B.R. 586, 591 (Bankr. N.D. Ohio 2007); *In re McIvor,* No. 06-42566, 2006 WL 3949172 at *4 (Bankr. E.D. Mich. Nov. 15, 2006); *In re Wilson,* 356 B.R. 114, 119 (Bankr. D. Del. 2006); *Farrar-Johnson,* 353 B.R. at 230. That is, by using two different terms, Congress intended to "achieve two different results." *Chamberlain,* 369 B.R. at 525; *Enright,* 2007 WL 748432 at *5.

The court in *Chamberlain* states its rationale for interpreting the term "applicable" as follows: "[A]pplicable is an adjective that modifies the 'amounts specified' in the Standards. It does not modify 'debtor's monthly expenses,' which appears at the beginning of § 707(b)(2)(A)(ii)(I)." 369 B.R. at 524. *See also In re Haley,* 354 B.R. 340, 344 (Bankr. D. N.H. 2006) ("[I]n section 707(b)(2)(A)(ii)(I), the term 'applicable' modifies the phrase 'monthly expense amounts specified under the . . . Local Standards.'").

Accordingly, for these courts, "applicable" references the Local Standards that apply to the debtor as determined by his or her place of residence. *See Chamberlain,* 369 B.R. at 524; *In re Briscoe,* 374 B.R. 1, 10 (Bankr. D.D.C. 2007); *Enright,* 2007 WL 748432 at *6; *Haley,* 354 B.R. at 344; *McIvor,* 2006 WL 3949172 at *4; *In re Prince,* No. 06-10328C-7G, 2006 WL 3501281 at *2 (Bankr. M.D.N.C. Nov. 30, 2006); *Wilson,* 356 B.R. at 119; *Farrar-Johnson,* 353 B.R. at 230-31. Put another way, whether a monthly expense amount as specified under the Local Standards is applicable to the debtor depends on the number of vehicles he or she owns or leases and on where he or she resides. *Haley,* 354 B.R. at 343-44.

Some courts refer to Form B22C as additional evidence that the debtor can take the vehicle ownership expense deduction, regardless of whether he or she makes a lease or loan payment on a vehicle. These courts reason that, on Form B22C, "[i]f the form is filled out correctly the debtor is always allowed at least the standard ownership cost regardless of the existence of or the amount of an actual automobile expense payment."[12] *In re Wilson,* 373 B.R. 638, 642 (Bankr. W.D. Ark. 2007). *Accord Crews,* 2007

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[12] According to the court in *Crews,* the advisory committee note to Form B22C indicates that the ownership/lease component does not require the debtor to make lease or loan payments on the vehicle. *In re Crews,* No. 06-13117, 2007 WL 626041 at *4 (Bankr. N.D. Ohio Feb. 23, 2007). The advisory committee note states: "The ownership/lease component . . . may involve debt payment." The court concluded that the use of the word "may" implies that debt payment on the vehicle is not a prerequisite in asserting the deduction.

WL 626041 at *4; *Prince,* 2006 WL 3501281 at *3; *In re Demonica,* 345 B.R. at 902; *In re Naslund,* 359 B.R. 781, 792 (Bankr. D. Mont. 2006).[13] Thus, § 707(b)(2)(A)(ii)(I) provides a fixed expense deduction in terms of "Ownership Costs," not a limitation.

2. Courts disallowing the vehicle ownership expense deduction

Courts on the other side of the issue read "applicable" less restrictively. They read "applicable" to mean that the debtor can deduct a vehicle ownership expense under the Local Standards *only if* he or she has such an expense in the first place. *Neary v. Ross-Tousey (In re Ross-Tousey),* 368 B.R. 762, 765 (E.D. Wis. 2007). *See, e.g., Fokkena v. Hartwick,* 373 B.R. 645, 650 (D. Minn. 2007) (citing *Ross-Tousey,* 368 B.R. at 764-65); *In re Garcia,* No. 07-00268, 2007 WL 2692232 at *4 (Bankr. D. Ariz. Sept. 11, 2007); *In re Canales,* 377 B.R. 658, 665-66 (Bankr. C.D. Cal. 2007); *In re Brown,* 376 B.R. 601, 606 (Bankr. S.D. Tex. 2007); *In re Ceasar,* 364 B.R. 257, 262 (Bankr. W.D. La. 2007); *In re Howell,* 366 B.R. 153, 157 (Bankr. D. Kan. 2007); *In re Carlin,* 348 B.R. 795, 798 (Bankr. D. Or. 2006); *In re McGuire,* 342 B.R.

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[13] Of course, national or local forms are only valid to the extent that they conform to the substantive provisions of the Bankruptcy Code. It is axiomatic that guidelines in a form cannot stand as independent authority in opposition to the Bankruptcy Code itself. *See, e.g., Sunahara v. Burchard (In re Sunahara),* 326 B.R. 768, 782 (9th Cir. BAP 2005).

608, 613 (Bankr. W.D. Mo. 2006). Under this reading, though the debtor's "actual" expense does not necessarily control the amount of the deduction, "the debtor must still have *some* expense in the first place before the Standard amount becomes 'applicable.'" *Ross-Tousey,* 368 B.R. at 765 (emphasis in original).

According to these courts, this reading does not equate "actual" with "applicable." "Applicable" describes "something that is 'capable or suitable for being applied'" – that is, appropriate. *Garcia,* 2007 WL 2692232 at *4 (quoting Merriam-Webster's Online Dictionary, www.wm.com/dictionary). *See also Howell,* 366 B.R. at 157 (reasoning that, by employing the word "applicable," which the dictionary defines as "capable of being applied" or "readily applicable or practical," the drafters of the statute suggest that the standards must be interpreted in the context of the Manual). If the debtor has no lease or loan payments to report on Form B22C, then there is no deduction under the Local Standard. *Garcia,* 2007 WL 2692232 at *4. *See also Ross-Tousey,* 368 B.R. at 765.

These courts believe that construing the statute in this manner "gives meaning to the distinction between 'applicable' and 'actual'" without necessarily concluding that "applicable" means an actual expense up to the Local Standards cap. *Id.* If interpreted to allow the debtor the full amount of the deduction, regardless of whether the debtor in fact makes loan or lease payments, then the term "applicable" would be superfluous. *In re Wiggs,* No. 06-70203, 2006 WL 2246432 at *2 (Bankr. N.D. Ill. Aug. 4, 2006). If so interpreted, it simply is not necessary to the sense of § 707(b)(2)(A)(ii)(I).

In further support of this rationale, some of these courts consider the Manual as an aid in interpreting the language of § 707(b)(2)(A)(ii)(I).[14] *See Slusher,* 359 B.R. at 309; *Talmadge,* 371 B.R. at 100-01; *Oliver,* 350 B.R. at 301 n.4; *Hardacre,* 338 B.R. at 726; *Carlin,* 348 B.R. at 797. The Manual provides that the Transportation Standard is the maximum a taxpayer may claim – it fixes the deduction at the allowance under the Local Standard or the amount actually paid, whichever is less.[15] The Manual further specifies that

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[14] These courts justify looking to the Manual for guidance on the ground that reference to the Manual is necessary to place the standards found within § 707(b)(2)(A)(ii)(I) in context. *Fokkena,* 373 B.R. at 650-51 (citing *Slusher,* 373 B.R. at 309); *Howell,* 366 B.R. at 157. *See also In re Hardacre,* 338 B.R. 718, 726 (Bankr. N.D. Tex. 2006) ("[I]t is instructive to refer to publications of [the IRS] for guidance as to the types of 'debt payments' that can reduce allowances under the Local Standards."). In addition, the legislative history specifically references the Manual. H.R. Rep. 109-31(I), at 13-14 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 99-100; *Stapleton v. Talmadge (In re Talmadge),* 371 B.R. 96, 100 (Bankr. M.D. Pa. 2007); *In re Bennett,* 371 B.R. 440, 445 (Bankr. C.D. Cal. 2007); *In re Oliver,* 350 B.R. 294, 301 n.4 (Bankr. W.D. Tex. 2006).

Another court argues that nothing in the statutory language or the legislative history prohibits a court from referring to the Manual for guidance. *Ceasar,* 364 B.R. at 262. Other courts contend that reference to the Manual is acceptable as § 707(b)(2)(A)(ii)(I) incorporates the Local Standards. *Brown,* 376 B.R. at 606-07; *Carlin,* 348 B.R. at 797.

[15] Part 5, Chapter 15, Section 1.7, Subsection 4 of the Manual specifically provides that, with respect to the categories,

(Continued on following page)

the Transportation Standards "consist of nationwide figures for *loan or lease payments referred to as ownership cost,* and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area."[16] (emphasis added). It also states that if the taxpayer has no car payment, only the operating cost portion of the Transportation Standard is used to calculate the allowable transportation expense.[17] As the Manual itself prohibits the debtor from asserting the vehicle ownership expense deduction when he or she has no loan or lease payments on a vehicle, these courts reason that § 707(b)(2)(A)(ii)(I) does not allow such a deduction either.[18]

"Housing and Utilities" and "Transportation," under the Local Standards, a taxpayer "will be allowed the local standard or the amount actually paid, whichever is less."

[16] Part 5, Chapter 15, Section 1.7, Subsection 4.B of the Manual. Also, Part 5, Chapter 15, Section 1.9, Subsection 1.B of the Manual defines transportation expenses as "[v]ehicle insurance, *vehicle payment (lease or purchase),* maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver's license, [and] public transportation." (emphasis added).

[17] The note under Part 5, Chapter 15, Section 1.9, Subsection 1.B of the Manual states: "The taxpayer is *only allowed* the operating cost or the cost of transportation." (emphasis added).

[18] We note that Congress looked to the Manual for the definitions of certain terms. For example, Congress quoted the Manual for the definition of "necessary expenses." H.R. REP. No. 109-31, at 14 n.63 (2005), *reprinted in* BANKRUPTCY REFORM: LEGISLATIVE HISTORY OF THE BANKRUPTCY ABUSE PREVENTION AND

(Continued on following page)

C. The Debtor Cannot Take a Deduction Under the Plain Meaning of § 707(b)(2)(A)(ii)(I)

The debtor here urges us to adopt the rationale of those courts allowing the vehicle ownership expense to debtors who make no lease or loan payments on a vehicle. After much consideration, we find the rationale of the courts *disallowing* the deduction more persuasive.

When confronted with questions of statutory construction, we begin our analysis with the language of the statute itself, *Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999), mindful that Congress "'says in a statute what it means and means in a statute what it says there.'" *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6 (2000) (citation omitted). When the statute's language is plain, we enforce it according to its terms, unless such a reading would render it absurd. *Lamie v. United States Trustee,* 540 U.S. 526, 534 (2004) (quoting *Hartford,* 530 U.S. at 6).

To determine whether the statutory language is plain or ambiguous, we refer to "the language itself,

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CONSUMER PROTECTION ACT OF 2005 (2005). Congress also cited to the Manual in describing the Local Standards. *Id.*

We agree with the court in *Canales,* however, that although the Manual is "helpful in some contexts, [it does] not give meaning to the statute itself." 377 B.R. at 664. As we explain below, the statutory language, plainly read, does not allow the debtor to deduct a vehicle ownership expense when he or she has no loan or lease payments.

the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). When a statute does not define a term, we construe that term according to its ordinary, contemporary, common meaning. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004). We may resort to a dictionary to determine the plain meaning of a term undefined by a statute. *Id.* We only refer to the statute's legislative history if an ambiguity exists or an absurd construction results. *Id.*

We note, however, that statutory construction is a "holistic endeavor." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). The overall statutory scheme often clarifies a seemingly ambiguous provision because "only one of the permissible meanings [of that provision] produces a substantive effect that is compatible with the rest of the law." *Id. See also Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) ("[S]tatutory language cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (citation omitted).

Congress has deemed the expense of owning a car to be a basic expense that debtors can deduct in calculating what they can afford to pay to their creditors. However, in making that calculation, what is important is the payments that debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors.

> The statute is only concerned about protecting the debtor's ability to continue owning a car, and if the debtor *already* owns the car, the debtor is adequately protected. . . . When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors.

Ross-Tousey, 368 B.R. at 766 (emphasis in original).

Section 707(b)(2)(A)(ii)(I) provides, in relevant part, that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under . . . the Local Standards." As set forth in the statute, the adjective "applicable" modifies the meaning of the noun "monthly expense amounts;" it indicates that the deduction of the monthly expense amount specified under the Local Standard for the expense becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense.

The ordinary, common meaning of "applicable" further impels us to this conclusion. "Applicable," in its ordinary sense, means "capable of or suitable for being applied." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 60 (11th ed. 2005). Given the ordinary sense of the term "applicable," how is the vehicle ownership expense allowance *capable of being applied* to the debtor if he does not make any lease or loan payments on the vehicle? In other words, how can the debtor assert a deduction for an expense he does not have? If we granted the debtor such an allowance, we would be reading "applicable" right out of the Bankruptcy Code. *See also Ross-Tousey,* 368 B.R. at 765.

The debtor also argues for allowance of the vehicle ownership expense deduction on equitable grounds. He claims that, due to the age of the car, the likelihood of major repairs and the costs of such repairs will increase. He further contends that the allowable operating costs under the Local Standards do not take into account the costs of major repairs.

However, as the court in *Carlin* noted:

> Numerous safeguards are in place to protect both debtors and creditors. Debtors who own old or high mileage cars "free and clear," are entitled to an extra $200 per month operating expense. Also, a "free and clear" owner is not "stuck" with the vehicle operating expenses allowed under the IRS Standards. Section 707(b)(2)(B) is also available for "above the median" Chapter 13 debtors. Section 707(b)(2)(B), allows additional expenses based on "special circumstances."

348 B.R. at 798 (citations omitted). We agree with the court in *Carlin* and conclude that the debtor's appeal to equity is unavailing.

Further, our interpretation of § 707(b)(2)(A)(ii)(I) has a substantive effect that is consistent with the underlying goals of BAPCPA. *Cf. Timbers,* 484 U.S. at 371. To interpret the statute otherwise is counterintuitive to one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible. *Howell,* 366 B.R. at 157; *Bennett,* 371 B.R. at 445 (citing H.R. Rep. No. 109-31, pt. 1 at 2 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89); *Ceasar,* 364 B.R. at 263 (citing 151 CONG. REC. S2470 (March 10, 2005)); *Hardacre,* 338 B.R. at 725 (citing same).[19] *But see Swan,* 368 B.R. at 20-21 (concluding that allowance of the standardized deduction is consistent with the intent of BAPCPA to limit the bankruptcy court's discretion to examine the debtor's lifestyle in determining his or her disposable income). When viewed within the larger context of BAPCPA, we believe the statute can only be interpreted to "apply" expense standards in cases where debtors in fact pay such expenses.

VI. CONCLUSION

The bankruptcy court determined that, by deducting a vehicle ownership expense under § 707(b)(2)(A)(ii)(I) for a car that he owned free of encumbrances, the debtor did not devote all of his projected disposable income to fund the plan. The bankruptcy court thus denied plan confirmation pursuant to § 1325(b)(1)(B).

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[19] Even the court in *Wilson,* which ultimately allowed the debtor the vehicle ownership expense deduction, admitted:

> The irony is palpable that Congress'[s] efforts to eliminate perceived abuses in the bankruptcy system by forcing debtors into Chapter 13 also diminishes payments to unsecured creditors by mandating the use of fictitious amounts of income and expenses.

373 B.R. at 644.

We agree with the courts that hold that a debtor has no right to deduct a vehicle ownership expense when he or she makes no lease or loan payments on the vehicle. Under § 707(b)(2)(A)(ii)(I), the deduction of a vehicle ownership expense only applies to the debtor when he or she has that particular expense.[20] Therefore, we AFFIRM.[21]

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[20] The issue of whether, if the debtor makes loan or lease payments on a vehicle, the debtor can take the full deduction under the Local Standards, whatever the actual amount of the vehicle expense, is not before us in this appeal. Some courts have concluded that the debtor can take the full standard deduction, even though he or she has an actual expense lower than the standard deduction. *See, e.g., In re Barrett,* 371 B.R. 855, 859 (Bankr. S.D. Ill. 2007) (allowing the debtor to assert the full vehicle ownership expense deduction of $471 under the Local Standard, even though she had an average monthly car payment of $75.13); *Naslund,* 359 B.R. at 791, 793 (allowing the debtors to assert the full vehicle ownership expense deduction of $471 when their actual monthly payment was $133 and the average monthly payment over 60 months was $85.15). *See also, e.g., Swan,* 368 B.R. at 21-22 (allowing the debtor to assert the full housing expense deduction of $1,644 under the Local Standard, even though her actual monthly rent payment was $800). Other courts have taken a contrary position. *See, e.g., In re Rezentes,* 368 B.R. 55, 56, 62 (Bankr. D. Haw. 2007) (ruling that the debtors can only deduct their actual monthly housing expense of $300, even though the full housing expense deduction under the Local Standard was $2,000).

[21] At oral argument, counsel for both parties agreed with our suggestion that we certify our disposition to the court of appeals for possible review of a non-final order. Concurrently with the issuance of this opinion, we are issuing that certification.

[SEAL]
Entered on Docket
June 06, 2007

/s/ Bruce A. Markell
Hon. Bruce A. Markell
United States
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * *

In re:
JASON M. RANSOM,
Debtor.

Case No.: BK-S-06-11566-BAM
Chapter 13
Date: N/A
Time: N/A

MEMORANDUM DENYING CONFIRMATION

On July 5, 2006, debtor Jason Ransom filed for protection under Chapter 13 of the Bankruptcy Code,[1] and at that time, he also filed a Chapter 13 Plan (the "Plan") and Statement of Current Monthly and Disposable Income ("Form B22C"). On August 25, 2006, the trustee filed an opposition to plan confirmation, recommending denial of confirmation on the basis that Mr. Ransom was improperly taking a deduction on Form B22C for a vehicle that he owned free of any lien. On September 5, 2006, MBNA

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[1] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, Title 11 of the United States Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Pub. L. 109-8, 119 Stat. 23 (2005).

America Bank, N.A. ("MBNA") and Chase Manhattan Bank USA, N.A. ("Chase"), both creditors in this bankruptcy case, filed a joint objection to confirmation, also based on Mr. Ransom's decision to take a deduction on Form B22C for a vehicle that was paid in full. An evidentiary hearing was held on January 25, 2007, at which time the court requested additional briefing on the subject.

In his Brief in Support of Confirmation, Mr. Ransom argues five main points. First, Mr. Ransom argues that, notwithstanding the fact that Section 1325(b)(3) specifically references Section 707(b)(2)(A) & (B) for a list of permissible expense deductions in determining "projected disposable income," Section 707 cannot apply in Chapter 13 because Section 103(b) states that "subchapters I and II of chapter 7 of this title apply only in a case under" Chapter 7. 11 U.S.C. § 103(b). Second, Mr. Ransom argues that "even if the § 707(b)(2) expenses apply in Chapter 13, because that section is specifically referred to in § 1325(b)(3), it would not apply in this situation. Section § 707(b)(2) incorporates § 707(b)(1), which involves 'abuse' and the dismissal or conversion of a chapter 7, not confirmation of a chapter 13 plan." Brief in Support of Confirmation, Doc. #27, p. 2-3. Third, Mr. Ransom argues that the test under Section 707 should not be applied in Chapter 13, because the language in Section 1325(b)(2) regarding "amounts reasonably necessary to be expended" implies that the amounts should be reasonably necessary and therefore grounded in fact, using a determination of expenses under Schedule J. Fourth, Mr. Ransom argues that the plain language of Section 707(b)(2) permits debtors to deduct the car ownership expense even if a debtor's vehicle is paid in full. Finally, Mr. Ransom argues that the 'Means Test' under Section 707(b) is unconstitutional under an Equal Protection analysis.

The court does not find any of the arguments persuasive and will address each in turn, below.

Section 707's Application to Chapter 13

Although Mr. Ransom is correct that Section 103(b) clearly states that Subchapters I and II of chapter 7 (Section 707 is found under Subchapter I) apply only in cases under Chapter 7, Section 1325(b)(3) specifically references Section 707 for purposes of determining reasonably necessary expenses. Generally, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one. . . ." Morton v. Mancari, 417 U.S. 535, 550-51 (1974). Here, Section 1325(b)(3) is narrower than Section 103(b); whereas Section 103(b) makes a sweeping statement about the first two Subchapters of Chapter 7, Section 1325(b)(3) specifically references Section 707(b)(2) for the sole purpose of calculating appropriate expenses for deduction in determining "projected disposable income."

Furthermore, Section 103(b) and Section 1325(b)(3) are not in direct conflict, as Section

1325(b)(3) only requires that amounts reasonably necessary to be expended be determined "in accordance with" Section 707(b)(2)(A) & (B). 11 U.S.C. § 1325(b)(3). Thus, Section 1325(b)(3) does not directly incorporate Section 707(b)(2), but rather uses its text as a guideline for determining expenses. Section 707(b)(2) does not *apply* in Chapter 13; it only provides guidance for a determination of expenses under Section 1325(b)(3).

Section 707(b)(2) and its incorporation of Paragraph (1)

Mr. Ransom next argues that Section 707(b)(2) incorporates Section 707(b)(1), which is focused on abuse in the Chapter 7 context, therefore rendering Section 707(b)(2) inapplicable in the Chapter 13 context. As described in the previous section, Section 1325(b)(3) only determines expenses "in accordance with" the expenses listed in Section 707(b)(2)(A) & (B). It does not directly apply Section 707(b)(2), and therefore it does not incorporate Section 707(b)(1). Even were Section 1325(b)(3) to directly apply Section 707(b)(2), it would nevertheless not automatically incorporate Section 707(b)(1). *See* Sunahara v. Burchard (*In re* Sunahara), 326 B.R. 768, 781 (9th Cir. BAP 2005) (holding that Section 1329(b)'s reference to Section 1325(a) – which itself references Section 1325(b) – does not automatically incorporate Section 1325(b) into Section 1329(b)).

Using Schedules I & J in Chapter 13

Mr. Ransom further argues that reasonably necessary expenses should be determined using Schedules I & J, as they are the more accurate measurement of "amounts reasonably necessary to be expended." 11 U.S.C. § 1325(b)(2). This issue was addressed by this court in *In re* Slusher, 359 B.R. 290, 300 (Bankr. D. Nev. 2007). In *Slusher*, this court held that Form B22C serves only as a presumptive guide in any determination of "projected disposable income" as required by Section 1325(b)(1)(B). "For above-median debtors . . . , this presumption is further strengthened by the language in Section 1325(b)(3), but it remains a presumption nevertheless." *Id.* Thus, although Mr. Ransom is correct that Schedules I & J can be utilized in a determination of "projected disposable income" under Section 1325(b), pursuant to *Slusher*, Form B22C remains the presumptive determination of "projected disposable income." Mr. Ransom has provided no evidence, such as a change of circumstances, supporting a determination by this court that the presumptive figures from Form B22C should not be followed.

Vehicle Ownership Expense

Having determined that this court will use the expenses listed in Section 707(b)(2) in calculating "projected disposable income," the next issue is whether the plain language of Section 707(b)(2) allows the debtor to deduct the full vehicle ownership expense despite the fact that the debtor's vehicle is not encumbered by a lien and is paid in full. For the reasons set forth in *In re* Slusher, 359 B.R. at 305-310, the court finds that Mr. Ransom may only deduct a vehicle ownership expense if he is currently making loan or lease payments on that vehicle. Furthermore, because the vehicle in question is a 2004 model year, Mr. Ransom cannot deduct an additional operating expense absent a showing that the vehicle's mileage exceeds 75,000 miles. *See Id.* at 310 ("'[C]onsistent with IRS Local Standards, [the debtors] are entitled to claim on Form B22C an additional operating expense of $200, which expense is allowed for debtors with cars more than six years old, or having more than 75,000 miles'"), *quoting In re* McGuire, 342 B.R. 608, 613 (Bankr. W.D. Mo. 2006).

Constitutional Concerns

Finally, Mr. Ransom argues that the Means Test found in Section 707(b) is unconstitutional because it discriminates based on gender in a manner that violates equal protection under the Fifth Amendment's Due Process clause. *See* Bolling v. Sharpe, 347 U.S. 497 (1954) (holding that equal protection applies to the federal government through the Fifth Amendment's Due Process clause). Mr. Ransom states that studies have shown a disparity between the incomes of women and men, with men earning more than women. *See* ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP 31, n.60 (2003). However, with this as his factual background, Mr. Ransom then makes two contradictory arguments. First, he argues that "even if women qualify for chapter 7 initially, they are unlikely to get to use the deductions in § 707(b)(2)(A)(ii)(I) and may subject them to dismissals for abuse, at a greater rate than men." Brief in Support of Confirmation, Doc. #27, p. 4. Mr. Ransom then argues that due to their higher wages, "males seeking to file bankruptcy are more likely compelled to file chapter 13's then [sic] chapter 7's." Reply to Response Brief to Debtor's Brief in Support of Confirmation, Doc. #30, p. 2.

It is hard for this court to ascertain the precise discriminatory impact present here when Mr. Ransom argues on the one hand that the Means Test harms women, then on the other hand argues that it harms men. Regardless, the court will consider only the second argument from a constitutional standpoint because the first argument is premised on an incorrect understanding of the Means Test. Mr. Ransom's first argument is that because of women's generally lower wages, their incomes are less likely to be above-median than those of men. As a result, they will not have access to the default expense deductions found in Section 707(b)(2)(A)(ii)(I), and consequently their cases are more likely to be dismissed for abuse. However, if a debtor falls below median income, they are not required to complete the full Means Test and no presumption of abuse arises. *See* 11 U.S.C. § 707(b)(7). Thus, the fact that women are less likely to fall into the above-median class of debtors, and therefore will not have access to the Section

707(b)(2)(A)(ii)(I) expense deduction, can only benefit them; this is in direct contradiction to Mr. Ransom's first argument.

The second argument, however, deserves a more careful constitutional analysis. Mr. Ransom argues that the fact that men generally receive higher wages than women means that they are more likely to be above-median debtors. They therefore are more likely to be forced into Chapter 13 under the Means Test. This, he argues, amounts to improper discrimination based on gender deserving of intermediate scrutiny. Intermediate scrutiny is used for classifications based on gender,[2] illegitimacy,[3] and the education of undocumented alien children,[4] among other suspect classes, and it requires the government to bear the burden of proof in showing that a classification by gender "serve[s] important governmental objectives and [is] substantially related to those objectives." Craig v. Boren, 429 U.S. 190, 197 (1976).

However, intermediate scrutiny is not the appropriate level of scrutiny to apply to this issue. Discriminatory impact alone is insufficient to prove a gender classification. If a law is facially neutral, a gender classification requires proof that there is a discriminatory purpose behind the law. *See* Personnel Administrator of Massachusetts v. Feeney, 442 U.S.

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[2] *See, e.g.*, United States v. Virginia, 518 U.S. 515 (1996).

[3] *See, e.g.*, Lehr v. Robertson, 463 U.S. 248 (1983).

[4] *See, e.g.*, Plyler v. Doe, 457 U.S. 202 (1982).

256 (1979) (holding that a discriminatory impact is insufficient to prove a gender classification; there must be proof of discriminatory purpose). Although Mr. Ransom has alleged a discriminatory impact, he has neither alleged nor provided any evidence supporting a discriminatory purpose behind the Means Test.

As a result, the proper level of scrutiny to apply in determining whether the Means Test under Section 707(b) meets the requirements of equal protection is rational basis review. *See* United States v. Kras, 409 U.S. 434, 446 (1973) ("[B]ankruptcy legislation is in the area of economics and social welfare. This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational justification."). Rational basis review requires the challenger to bear the burden of proof in showing that the challenged law is not "rationally related to a legitimate state interest." New Orleans v. Dukes, 427 U.S. 297, 303 (1976); *see also* Hodel v. Indiana, 452 U.S. 314, 331-332 (1981) ("Social and economic legislation . . . that does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate government purpose. Moreover, such legislation carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality.").

Thus to succeed in his argument, Mr. Ransom must show either that the Means Test is not based on a legitimate governmental purpose or that it is an arbitrary and unreasonable means of accomplishing that purpose. He has failed to demonstrate either here. The Means Test appears to be predicated on a governmental desire to curb abuses in the bankruptcy system and require debtors who can afford to repay some of their debts to file under Chapter 13. *See* H.R. REP. NO. 109-31, pt. 1, 1st SESS. 79 (2005) ("The heart of [BAPCPA]'s consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism . . . which is intended to ensure that debtors repay creditors the maximum they can afford."). Although the Means Test is not a perfect solution, the current form of the Means Test is neither arbitrary nor unreasonable, as those terms are used in constitutional law. It attempts to meet the government's expressed goal and creates a valid framework by which that goal can be accomplished. Therefore, the Means Test survives rational basis review and does not violate equal protection under the Fifth Amendment's Due Process clause.

Conclusion

All of the debtor's arguments regarding the Means Test or the vehicle ownership expense fail on careful analysis. Mr. Ransom's proposed plan provides that he will pay $500 a month for sixty months to the trustee. Of that, only $389 a month goes to unsecured creditors. However, the debtor must devote all of his projected disposable income to payments to unsecured creditors under the plan. *See*

11 U.S.C. § 1325(b)(1)(B). Mr. Ransom's proposed plan does not satisfy this test; his projected disposable income based on Form B22C is $681.55 (listed disposable income of $210.55 plus $471 due to disallowance of the vehicle ownership expense deduction). Because Mr. Ransom's proposed plan does not devote all of his projected disposable income to payments to unsecured creditors under the plan, the court hereby DENIES confirmation of Mr. Ransom's Chapter 13 Plan #1.

The court also notes that during oral argument, counsel for the debtor expressed a desire to appeal this issue in light of this court's recent holding in *Slusher*. 359 B.R. 290 (Bankr. D. Nev. 2007). An order denying confirmation is not a final order. *See* Bartee v. Tara Colony Homeowners Ass'n (*In re* Bartee), 212 F.3d 277, 283 (5th Cir. 2000) ("In the case of a denial of confirmation of a plan, we look to whether or not the order was intended to serve as a final denial of the relief sought by the debtor. If the order was not intended to be final – for example, if the order addressed an issue that left the debtor able to file an amended plan (basically to try again) – appellate jurisdiction would be lacking."); *see also* Nicholes v. Johnny Appleseed *In re* Nicholes), 184 B.R. 82 (9th Cir. BAP 1995). The District Court or Bankruptcy Appellate Panel may, however, hear an appeal from an interlocutory order at its discretion, if the bankruptcy court certifies that its order "involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the

Supreme Court of the United States. . . ." 28 U.S.C. 158(d)(2)(A)(i). Here, no controlling decision exists that addresses the issues found in this opinion and in *Slusher*. Furthermore, unless the District Court or Bankruptcy Appellate Panel agrees to hear an appeal on this issue as an interlocutory order, no reasonable means exist whereby this issue could be appealed, in this case or any other. Therefore, the court would favorably entertain a motion to certify the accompanying order for appeal.

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[SEAL] /s/ Bruce A. Markell
Entered on Docket **Hon. Bruce A. Markell**
June 06, 2007 **United States**
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * *

In re) Case No.: BK-S-06-11566-BAM
)
JASON M. RANSOM,) Chapter 13
Debtor.) Date: N/A
) Time: N/A

ORDER DENYING CONFIRMATION

Based on the "Memorandum Denying Confirmation" of even date, the Debtor's "Chapter 13 Plan # 1", filed July 5, 2006 (Docket #8) is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

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Jason M. Ransom
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: JASON M. RANSOM,
Debtor,

JASON M. RANSOM,
Appellant,
v.
MBNA, AMERICA BANK, N.A.,
Appellee,
EXECUTIVE OFFICE OF UNITED STATES TRUSTEE,
Trustee-Trustee.

No. 08-15066
BAP No. 07-01254-DbaMo
District of Nevada, Las Vegas

ORDER

(Filed Oct. 28, 2009)

Before: TROTT, McKEOWN and IKUTA, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing. Judges McKeown and Ikuta have voted to deny the petition for rehearing en banc and Judge Trott so recommends.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are DENIED.

11 U.S.C. § 707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including –

> **(1)** unreasonable delay by the debtor that is prejudicial to creditors;
>
> **(2)** nonpayment of any fees or charges required under chapter 123 of title 28; and
>
> **(3)** failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b)

> **(1)** After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution"

under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)

(A)

(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of –

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

(II) $10,000.

(ii)

(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of –

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)

(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide –

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of –

(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

(II) $10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing –

> **(i)** if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was –
>
> > **(I)** on active duty (as defined in section 101(d)(1) of title 10); or
> >
> > **(II)** performing a homeland defense activity (as defined in section 901(1) of title 32); or
>
> **(ii)** with respect to the debtor, while the debtor is –
>
> > **(I)** on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or
> >
> > **(II)** performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901(1) of title 32) performed for a period of not less than 90 days;
>
> if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such

active duty or performed such homeland defense activity.

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider –

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)

(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if –

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court –

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order –

(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has –

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion –

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)

(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if –

(i) the court does not grant the motion; and

(ii) the court finds that –

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph –

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that –

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of –

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than –

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7)

(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than –

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if –

(i)

(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury –

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)

(1) In this subsection –

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

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11 U.S.C. § 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if –

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan –

> **(A)** the holder of such claim has accepted the plan;
>
> **(B)**
>
> > **(i)** the plan provides that –
> >
> > > **(I)** the holder of such claim retain the lien securing such claim until the earlier of –
> > >
> > > > **(aa)** the payment of the underlying debt determined under nonbankruptcy law; or
> > > >
> > > > **(bb)** discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if –

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan –

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended –

(A)

(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than –

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the "applicable commitment period" –

(A) subject to subparagraph (B), shall be –

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than –

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

OPPOSITION
BRIEF

FILED
MAR 1 - 2010
OFFICE OF THE CLERK

No. 09-907

In The
Supreme Court of the United States

◆

JASON M. RANSOM,

Petitioner,

v.

MBNA AMERICA BANK, N.A.,

Respondent.

◆

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

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BRIEF OF RESPONDENT MBNA AMERICA BANK, N.A. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

◆

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March 1, 2010

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QUESTION PRESENTED FOR REVIEW

Whether the United States Bankruptcy Court for the District of Nevada correctly denied confirmation of the proposed Chapter 13 plan of Debtor Jason M. Ransom, such plan as failed to apply all of his projected disposable income to make payments to unsecured creditors as required by 11 U.S.C. § 1325(b)(1)(B), and as otherwise failed to show full payment of all allowed unsecured claims, 11 U.S.C. § 1325(b)(1)(A), because the plan included an expense for the amount for transportation ownership set by the Local Standards of the Internal Revenue Service for vehicles for which the debtor is not obligated by a loan or lease.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

MBNA America Bank, N.A. is wholly owned by Bank of America Corporation as a result of the latter's acquisition of one hundred percent of the outstanding stock of the former on January 1, 2006. Bank of America Corporation, a Delaware corporation, is publicly held and traded.

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ARGUMENT

In order to gain confirmation of a Chapter 13 plan if it faces objection by the trustee or the holder of an unsecured claim, a debtor must pay in full each allowed unsecured claim, 11 U.S.C. § 1325(b)(1)(A), or devote to the plan all *projected* disposable income to be received during the applicable commitment period, 11 U.S.C. § 1325(b)(1)(B) (emphasis added). Thus, confirmation rests, if allowed unsecured claims are not completely satisfied, on a qualifying amount of money paid over a qualifying span of time.

The Bankruptcy Code explicitly defines disposable income as current monthly income, itself further defined in the Bankruptcy Code (*see* 11 U.S.C. § 101(10A)),[1] less amounts that are reasonably

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[1] The statute reads:

(10A) The term "current monthly income" –

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on –

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii) [11 USCS § 521(a)(1)(B)(ii)]; or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii) [11 USCS § 521(a)(1)(B)(ii)]; and

(Continued on following page)

necessary to be expended for a debtor's support, for a debtor's dependent's support, and for other enumerated expenses. 11 U.S.C. § 1325(b)(2). If a debtor's current monthly income exceeds the median family income of her state,[2] the reasonableness of the expenditure amounts is "determined in accordance with" 11 U.S.C. §§ 707(b)(2)(A) and (B). 11 U.S.C. § 1325(b)(3).

The Bankruptcy Code, in 11 U.S.C. § 707(b)(2)(A), as directed by 11 U.S.C. § 1325(b)(3), sets forth how the amounts of an "above median" debtor's expenses are determined to be reasonably necessary. The former statute provides that most allowable expenses are determined under the standards for National, Local, and Other Necessary Expenses, issued by the Internal Revenue Service.

> (B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act [42 USCS §§ 301 et seq.], payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18 [18 USCS § 2331]) or domestic terrorism (as defined in section 2331 of title 18 [18 USCS § 2331]) on account of their status as victims of such terrorism.

11 U.S.C. § 101(10A).

[2] A so-called above median debtor.

Critical to an analysis of the Bankruptcy Code's requirement that a debtor pay *all* of her *projected* disposable income to her unsecured creditors is the participial adjective "projected", modifying "disposable income" in 11 U.S.C. § 1325(b)(1). "Project" may be defined as "to plan, figure, or estimate for the future." *See* Merriam-Webster's Online Dictionary, *available at* http://www.merriam-webster.com/dictionary/projected (last visited Feb. 23, 2010); *see City of Lincoln v. Ricketts*, 297 U.S. 373, 376 (1936) ("In construing the words of an act of Congress, we seek the legislative intent. We give to the words their natural significance unless that leads to an unreasonable result plainly at variance with the evident purpose of the legislation."); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 460 (1999) (using a dictionary to illuminate the meaning of "on account of").

Before the Court, in *Hamilton v. Lanning*, No. 08-998 (scheduled for oral argument, March 22, 2010), is this question: "Whether, in calculating the debtor's 'projected disposable income' during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period."

Respondent MBNA America Bank argues that the question in the instant matter is subsumed by the question presented in *Hamilton v. Lanning*. In that case, it seems apparent that the Court's analysis and decision will determine, *inter alia*, whether the projection of disposable income will include the expensing of costs that a debtor will not pay during the plan period. For example, if the Court in *Hamilton v. Lanning* decides that the calculation of projected disposable income may or shall be adjusted for differences between a debtor's pre-filing expenses and those paid during the plan period, then, of necessity, any expense, such as a vehicle loan or lease payment, that a debtor will not pay during the plan period is excluded from the calculation of projected disposable income. If, on the other hand, the Court decides that a debtor's expenses during the plan period must conform to his pre-filing expenses, then, once again, the calculation of his projected disposable income may not include a vehicle ownership expense if he was paying none prior to the filing of his petition.

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CONCLUSION

MBNA America Bank, N.A. urges the Court to deny the Petitioner's Petition for Writ of Certiorari because the question presented is duplicative of, and subsumed by, the question in *Hamilton v. Lanning*, No. 08-998 (scheduled for oral argument, March 22, 2010).

Respectfully submitted,

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REPLY
BRIEF

No. 09-907

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REPLY BRIEF

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INTRODUCTION

The Brief in Opposition ("Opp.") nowhere disputes Petitioner's assertion that there is a conflict between Circuits on allowing an ownership cost deduction for vehicles where the debtor makes no payments on the vehicles. The Opposition nowhere disputes Petitioner's assertion that it is necessary, for the administration of chapter 13 proceedings for above-median debtors, to determine how to treat the debtor's expenses with regard to 11 U.S.C. §§ 707(b)(2)(A)(ii)(I) and 1325(b)(1)(B).

As this Court stated, in a previous bankruptcy case, regarding a party which nowhere argued or even mentioned an important issue on appeal, "conspicuous silence on this point is a tacit admission." *Caplin v. Marine Midland Trust Co.,* 406 U.S. 416, 429 (1972). In the instant matter, Respondent's "conspicuous silence" regarding the split of authority between the Circuit Courts of Appeal is a tacit admission that certiorari is merited to determine the treatment of ownership cost deductions in calculating the debtor's "projected disposable income" during the plan period.

Respondent's objection to granting certiorari is the assertion that the issues posed by *Ransom v. MBNA Am. Bank*, 577 F.3d 1026 (9th Cir. 2009), are duplicative of and subsumed by those the Court will consider in deciding *Hamilton v. Lanning*, No. 08-998 (scheduled for oral argument, March 22, 2010) (Opp. 5).

Petitioner will show below that the issues posed by *Ransom* cannot be resolved by review of *Lanning*. The cases stand at the forefront of two different lines of decisions regarding calculation of a debtor's projected disposable income. The *Ransom* line of cases turn on what deductions are allowed in determining disposable income: are standard ownership deductions provided under the Bankruptcy Code, or must the debtor always have actual expenses in order to take a deduction against income? By contrast, *Lanning* cases examine the timeframe for calculating income: will income or expenses be determined wholly by pre-filing data, or can the bankruptcy court consider post-filing income or expenses?

The questions posed for review by the *Ransom* and *Lanning* are readily distinguishable, and a decision in what case is not determinative of the proper resolution of the other case.

A. The Question Whether To Allow An Ownership Cost Deduction For Vehicles Regardless of Vehicle-Related Debt Payments Is The Subject Of A Widespread Split of Authority, And Is Recurring And Important.

The decision by the Ninth Circuit in *Ransom* to disallow a vehicle ownership under § 707(b)(2)(A)(ii)(I) where a vehicle is owned free and clear of debt, stands in opposition to holdings of the Fifth, Seventh and Eighth Circuit Courts of Appeals.

The split of authority regarding the treatment of ownership deductions for vehicles continues. In a Maine decision, *In re Coffin,* 396 B.R. 804 (Bankr. D. Me. 2008) (citing the main cases), a deduction for vehicle expenses has been denied where the debtor is making no payments on the vehicles. In two Massachusetts decisions, *In re Kimanzi Musili Mati,* 390 B.R. 11 (Bankr. D. Mass. 2008) and *In re Young,* 392 B.R. 6 (Bankr. D. Mass. 2008), the vehicle ownership deduction has been allowed in the absence of any ongoing payments. The Bankruptcy Court for the Eastern District of New York has denied the debtor a deduction for ownership costs where vehicles are owned free and clear. *In re Rabener,* 2010 Bankr. LEXIS 289 (Bankr. E.D. N.Y. 2010). By contrast, the Bankruptcy Court and the District Court for the Northern District of New York have allowed a deduction of ownership expenses on vehicles owned free of debt. *See, In re Pearl,* 394 B.R. 309 (Bankr. N.D. N.Y. 2008) and *In re Swimelar,* 2009 U.S. Dist. LEXIS 52049 (D. N.D. N.Y. 2009).

In the absence of a consistent controlling authority, bankruptcy trustees face an ongoing difficulty in ascertaining how to treat the deduction for vehicle costs. In Connecticut, the debtor has been allowed a vehicle deduction even though he makes no payments on vehicle loans or leases. *See, In re Roberts,* 2008 Bankr. LEXIS 508 (Bankr. D. Conn. 2008) and *In re Salerno,* 408 B.R. 554 (Bankr. D. Conn. 2009). In the Bankruptcy Court for the Middle District of Florida, debtors have been allowed to deduct for vehicle ownership costs for vehicles not subject to a lien or security interest. *See, In re Ralston,* 400 B.R. 854 (Bankr. M.D. Fla. 2009) and *In re Wisham,* 416 B.R. 790 (Bankr. M.D. Fla. 2009). The Kansas Bankruptcy Court held that there can be no ownership expense deduction for a vehicle that is not encumbered. *In re Howell,* 366 B.R. 153 (Bankr. D. Kan. 2007). Subsequently, the Bankruptcy Appellate Panel for the Tenth Circuit held that a debtor is entitled to deduct applicable expenses for a vehicle even if there are no payments associated with the vehicle, but on appeal to the Tenth Circuit the decision was vacated. *In re Pearson,* 390 B.R. 706 (B.A.P. 10th Cir. 2008), dismissing appeal as moot, vacating opinion, 309 Fed. Appx. 216, 2009 U.S. App. LEXIS 2093, 2009 WL 205408 (10th Cir. 2009). In *In re Wenzel,* 415 B.R. 510 (Bankr. D. Kan. 2009), the Kansas Bankruptcy Court denied ownership expenses for a vehicle that is not encumbered, and made pointed reference to the continuing confusion of authorities:

> Since *Pearson I* was vacated by the Tenth Circuit Court of Appeals, it has no precedential value, and this Court declines to adopt its reasoning. This Court will continue to adhere to its decision in *Howell* until contrary direction is given by the Tenth Circuit Court of Appeals or Supreme Court.

In re Wenzel, 415 B.R. at 518.

Respondent has nowhere denied that review by this Court is needed to resolve the issue of how to deduct ownership costs for vehicles. If review is denied, Petitioner and others similarly situated will be denied an ownership cost deduction for his vehicles and confirmation of his chapter 13 plan, and Petitioner contends that such a result is contrary to the plain language of the statute.

B. The Court's Deliberation In *Hamilton v. Lanning* Involves A Different Issue From The Question Presented For Review In *Ransom*, And The Decision In *Lanning* Will Not Resolve The *Ransom* Dilemma.

The need for review by this Court comes down to whether the question for review in the instant matter will be decided in *Hamilton v. Lanning,* thus making a grant of certiorari in *Ransom* duplicative, and subsumed by, the question in *Lanning* (Opp. 5).

The *Ransom* question is not duplicative of *Lanning*. Regardless of how this Court resolves *Lanning*, the question posed by *Ransom* will remain unanswered.

The question being reviewed in *Lanning* is the timeframe during which the debtor's projected disposable income can be calculated. The *Lanning* issue will be resolved on ***when*** the debtor's income will be calculated, not ***what deductions*** will be allowed in determining disposable income. A close reading of the question for which certiorari was granted in *Lanning* will make the difference apparent. Review in *Lanning* is limited to the following:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses *during that period* are likely to be different from her income or expenses *during the pre-filing period*.

Hamilton v. Lanning, 545 F.3d 1269 (10th Cir. 2008), *cert. granted*, 130 S.Ct. 487, 175 L.Ed. 2d 343 (2009) (emphasis added).

Briefly put, the question in *Lanning* is whether the bankruptcy court may adopt a forward-looking approach to consider the debtor's income and expenses during the period of the chapter 13 plan, or whether the bankruptcy court is limited to consideration of the data furnished by the "means test" of § 1325(b)(2). The means test provides backward-looking data concerning income or expenses during the six-month pre-filing period. This Court has undertaken in *Lanning* to decide whether *post-filing* income or expenses can be considered in evaluating projected disposable income, in addition to *pre-filing* income or expenses.

The question which Petitioner has presented for review is quite different:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an *ownership cost deduction for vehicles* only if the debtor is *actually making payment on the vehicles*.

Petition for a Writ of Certiorari at "i" (emphasis added).

The *Ransom* question arises equally in the context of a forward-looking approach which takes into account post-petition income, or a backward-looking or historical approach which only considers disposable income under the means test.

The *Ransom* question is which ***deductions*** may be allowed against income: the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards," § 707(b)(2)(A)(ii)(I), or only actual payments to creditors on vehicles encumbered by debt. The *Lanning* question involves ***when*** income or expenses may be considered, post-filing or only pre-filing as calculated under § 1325(b)(2).

The recent decision in *In re Rabener*, 2010 Bankr. LEXIS 289 (Bankr. E.D. N.Y. 2010), decided January 21, 2010, illustrates that resolution of the *Ransom* question is independent of review of *Lanning*.

In *Rabener,* the Bankruptcy Court for the Eastern District of New York follows the *Ransom* decision and holds that there can be no ownership cost deduction if the owner is not making payments on the vehicle. The *Rabener* court goes so far as to state that it is "absurd on its face" to allow a debtor to deduct ownership costs if no actual expense exists. *Id.* at *23.

The *Rabener* court upholds *Ransom*, and adopts the forward-looking approach of the Tenth Circuit Court of Appeals in *Lanning*. In accord with *Lanning*, income and expenses are viewed prospectively and are accepted only to the extent they reflect a debtor's actual anticipated income and expenses for the life of the chapter 13 plan. *Rabener, supra,* 2010 Bankr. LEXIS at *7-8.

The *Rabener* court follows *Ransom*, but rejects the reasoning of another Ninth Circuit decision, *Maney v. Kagenveama (In re Kagenveama),* 541 F.3d 868 (9th Cir. 2008). In *Kagenveama*, a debtor's projected disposable income is a static calculation made on the date of the petition based upon historical income figures. *Id.* at 872-74.

If this Court's review of *Lanning* were determinative of the outcome in *Ransom*, as Respondent contends, then upholding the forward-looking approach on projected disposable income could yield only one outcome in *Ransom* – either affirmation or negation of the proposition that an ownership deduction can be taken for the debtor's vehicles regardless of whether the debtor owns the vehicles free and clear.

But such is not the case.

The *Rabener* court follows the forward-looking approach of *Lanning* to determine a debtor's projected disposable income. *Rabener* also agrees with *Ransom* and its holding that only actual expenses on vehicles can be deducted in calculating a debtor's projected disposable income.

The *Wenzel* Bankruptcy Court, *supra,* 415 B.R. at 518, is located in Kansas and subject to the controlling direction of the Tenth Circuit Court of Appeals, which decided *Lanning*. Yet *Wenzel*, like *Rabener*, follows *Ransom* and denies an ownership expense for any vehicle that is not encumbered.

If a holding in *Ransom* were duplicative of *Lanning,* then, judging by the decisions in *Rabener* and *Wenzel*, an affirmation of the forward-looking approach entails agreement with the *Ransom* decision that only actual expenses can be deducted in calculating disposable income.

However, the Circuit Courts of Appeals which adopt the forward-looking approach have decided overwhelmingly that the ownership cost deduction can be taken for vehicles even if the debtor is not making loan or lease payments on the vehicles. The Fifth Circuit adopted the forward-looking approach in *Nowlin v. Peake (In re Nowlin)*, 576 F.3d 258, 263 (5th Cir. 2009); the Fifth Circuit also allowed a deduction for vehicles owned free and clear, in *Tate v. Bolen*, 571 F.3d 423, 428 (5th Cir. 2009). The Seventh Circuit embraced the forward-looking approach in *In re Turner*, 574 F.3d 349, 355-56 (7th Cir. 2009); the Seventh Circuit also rejected the *Ransom* holding in *Ross-Tousey v. Neary*, 549 F.3d 1148, 1158 (7th Cir. 2008). The Eighth Circuit held that a debtor's projected disposable income should be viewed prospectively and not limited to pre-filing data, *McCarty v. Lasowski (In re Lasowski)*, 575 F.3d 815, 819-20 (8th Cir. 2009); the Eighth Circuit also ruled that a debtor need not make vehicle payments to claim a vehicle ownership expense, *eCast Settlement Corporation v. Washburn*, 579 F.3d 934, 937 (8th Cir. 2009).

Adoption of a forward-looking approach like the one in *Lanning* has been coupled in the Fifth, Seventh and Eighth Circuit Courts of Appeals with a repudiation of *Ransom*.

Nonetheless, the *Rabener* court has adopted the *Lanning* forward-looking approach and also affirmed the holding in *Ransom*.

The differing outcomes in the case law demonstrate that the question posed for review in *Ransom* is not duplicative of, and is not subsumed by, the question in *Hamilton v. Lanning*, now scheduled for oral argument before the Court.

◆

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JOINT
APPENDIX

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JOINT APPENDIX

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District of Nevada (Las Vegas)
Bankruptcy Petition #: 06-11566-bam

In Re Jason M. Ransom

Filing Date	#	Docket Text
07/05/2006	1	Chapter 13 Voluntary Petition. Fee Amount $274. Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/05/2006	2	Statement of Social Security Number(s) Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/05/2006	3	Declaration Re: Electronic Filing Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/05/2006	4	Chapter 13 Statement of Current Monthly and Disposable Income (Form 22C) Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/05/2006	5	Receipt of Filing Fee for Voluntary Petition (Chapter 13)(06-11566)

		[misc,volp13a] (274.00). Receipt number 3433803, fee amount $ 274.00. (U.S. Treasury) (Entered: 07/05/2006)
07/05/2006	6	Meeting of Creditors and Notice of Appointment of Trustee RICK A. YARNALL. 341 meeting to be held on 08/22/2006 at 11:00 AM at Foley Bldg,Rm 1500. Confirmation hearing to be held on 09/14/2006 at 01:30 PM at Foley Bldg,Third Floor. Chapter 13 Proof of Claims due by 11/20/2006. (Entered: 07/05/2006)
07/05/2006	7	Certificate of Credit Counseling *(Consumer Credit Counseling Service of Southern Nevada)* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/05/2006	8	Chapter 13 Plan #1 Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 07/05/2006)
07/09/2006	9	BNC Certificate of Mailing – pdf (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM) No. of Notices: 11. Service Date 07/09/2006. (Admin.) (Entered: 07/10/2006)

07/12/2006	10	BNC Certificate of Mailing (Related document(s) 6 Meeting of Creditors Chapter 13 (BNC), Meeting of Creditors Chapter 13 (BNC)) No. of Notices: 10. Service Date 07/12/2006. (Admin.) (Entered: 07/12/2006)
08/23/2006	11	341 Meeting Concluded – Assets (YARNALL(df), RICK) (Entered: 08/23/2006)
08/25/2006	12	Trustee's Opposition to Confirmation of Plan Combined with Trustee's Recommendation for Dismissal. (YARNALL, RICK) (Entered: 08/25/2006)
08/30/2006	13	BNC Certificate of Mailing – pdf (Related document(s) 12 Trustee's Opposition to Confirmation/Motion to Dismiss (BNC)) No. of Notices: 14. Service Date 08/30/2006. (Admin.) (Entered: 08/30/2006)
09/05/2006	14	Objection to Confirmation of Plan Filed by JEREMY T BERGSTROM on behalf of MBNA America Bank, NA and Chase Manhattan Bank USA, NA (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM.)(BERGSTROM, JEREMY) (Entered: 09/05/2006)
09/12/2006	15	Request for Special Notice with Certificate of Service Filed by JEREMY T BERGSTROM on behalf

		of MBNA America Bank, NA and Chase Manhattan Bank USA, NA (BERGSTROM, JEREMY) (Entered: 09/12/2006)
09/14/2006	16	Hearing Continued. Confirmation hearing to be held on 9/28/2006 at 01:30 PM at Foley Bldg,Third Floor. (Related document(s) Chapter 13 Plan #1 filed by Debtor JASON MATTHEW RANSOM) (Catu, AR) (Entered: 09/18/2006)
09/27/2006	17	Financial Management Course Certificate *(Consumer Credit Counseling Service of Southern Nevada)* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (BURKE, CHRISTOPHER) (Entered: 09/27/2006)
09/28/2006	18	Hearing Continued. Confirmation hearing to be held on 10/12/2006 at 01:30 PM at Foley Bldg,Third Floor. (Related document(s) 8 Chapter 13 Plan #1 filed by Debtor JASON MATTHEW RANSOM) (Catu, AR) (Entered: 09/29/2006)
10/12/2006	19	Hearing Continued. Confirmation hearing to be held on 11/17/2006 at 01:30 PM at Foley Bldg,Third Floor. (Related document(s) 8 Chapter 13 Plan #1 filed by Debtor JASON MATTHEW RANSOM) (Catu, AR) (Entered: 10/13/2006)

11/20/2006	20	Hearing Continued. Confirmation hearing to be held on 11/27/2006 at 01:30 PM at Foley Bldg,Third Floor. (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM) (Holmes, DH) (Entered: 11/20/2006)
11/21/2006	21	Hearing Continued. Confirmation hearing to be held on 11/27/2006 at 01:30 PM at Foley Bldg,Third Floor. (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM) (Holmes, DH) (Entered: 11/21/2006)
11/27/2006	22	Hearing Scheduled/Rescheduled. Evidentiary Hearing scheduled for 1/25/2007 at 03:00 PM at BAM-Courtroom 3, Foley Federal Bldg. (Related document(s) Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM) (Holmes, DH) (Entered: 11/28/2006)
12/27/2006	23	Notice Required By Federal Rule of Bankruptcy Procedure 4007 (c). (Holmes, DH) (Entered: 12/27/2006)
12/29/2006	24	BNC Certificate of Mailing. (Related document(s) 23 Notice Required By Federal Rule of Bankruptcy Procedure 4007(c).) No. of Notices: 38. Service Date 12/29/2006. (Admin.) (Entered: 12/29/2006)

02/20/2007	25	Order on Briefing Schedule for Confirmation of Debtors Plan (Related documents) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM.) (Holmes, DH) (Entered: 02/20/2007)
02/22/2007	26	BNC Certificate of Mailing – pdf (Related document(s) 25 Order (BNC)) No. of Notices: 38. Service Date 02/22/2007. (Admin.) (Entered: 02/22/2007)
02/26/2007	27	Brief *in Support of Confirmation of Chapter 13 Plan* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 8 Chapter 13 Plan) (BURKE, CHRISTOPHER) Modified on 2/27/2007 to relate to #8 in place of #16. (Lyons, MK). (Entered: 02/26/2007)
02/28/2007	28	Certificate of Service *of Fax of Brief in Support of Confirmation of Chapter 13 Plan* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 27 Brief, filed by Debtor JASON MATTHEW RANSOM) (BURKE, CHRISTOPHER) (Entered: 02/28/2007)
03/12/2007	29	Response *Brief to Debtor's Brief in Support of Confirmation with Certificate of Mailing* Filed by JEREMY T

		BERGSTROM on behalf of MBNA America Bank, NA and Chase Manhattan Bank USA, NA (Related document(s) 27 Brief, filed by Debtor JASON MATTHEW RANSOM.) (BERGSTROM, JEREMY) (Entered: 03/12/2007)
03/19/2007	30	Reply *to Response Brief to Debtors Brief in Support of Confirmation* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 29 Response, filed by Creditor MBNA America Bank, NA and Chase Manhattan Bank USA, NA.) (BURKE, CHRISTOPHER) (Entered: 03/19/2007)
03/20/2007	31	Certificate of Service *of Mailing of Reply to Response Brief to Debtors Brief in Support of Confirmation* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 30 Reply, filed by Debtor JASON MATTHEW RANSOM) (Attachments: # 1 Reply Matrix) (BURKE, CHRISTOPHER) (Entered: 03/20/2007)
03/27/2007	32	Notice of Entry of Order *on Briefing Schedule for Confirmation of Debtors Plan* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM

		(Related documents) 25 Order (BNC)) (BURKE, CHRISTOPHER) (Entered: 03/27/2007)
04/16/2007	33	Certificate of Service *of Mailing of Notice of Entry of Order and Order on Briefing Schedule for Confirmation of Debtors Plan* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 32 Notice of Entry of Order filed by Debtor JASON MATTHEW RANSOM, 25 Order (BNC)) (Attachments: # 1 Ransom Matrix) (BURKE, CHRISTOPHER) (Entered: 04/16/2007)
06/06/2007	34	Memorandum Denying Confirmation. (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM.) (Stiles, TE) (Entered: 06/06/2007)
06/06/2007	35	Order Denying Confirmation. (Related document(s) 8 Chapter 13 Plan #1 (BNC) filed by Debtor JASON MATTHEW RANSOM.) (Stiles, TE) (Entered: 06/06/2007)
06/08/2007	36	BNC Certificate of Mailing – pdf (Related document(s) 34 Order (BNC)) No. of Notices: 1. Service Date 06/08/2007. (Admin.) (Entered: 06/08/2007)
06/08/2007	37	BNC Certificate of Mailing – pdf (Related document(s) 35 Order

		(BNC)) No. of Notices: 1. Service Date 06/08/2007. (Admin.) (Entered: 06/08/2007)
06/11/2007	38	Notice of Entry of Order (Related document(s) 35 Order (BNC).) (YARNALL(lp), RICK) Modified on 6/12/2007 to Reflect Invalid PDF Image (Lakas, WM). (Entered: 06/11/2007)
06/11/2007	39	Notice of Entry of Order (Related document(s) 35 Order (BNC).) (YARNALL(lp), RICK) Modified on 6/12/2007 to Reflect Invalid PDF Image (Lakas, WM). (Entered: 06/11/2007)
06/12/2007	40	Notice of Withdrawal Filed by RICK A. YARNALL (Related document(s) 39 Notice of Entry of Order (BNC), 38 Notice of Entry of Order (BNC)) (YARNALL(lp), RICK) (Entered: 06/12/2007)
06/15/2007	41	BNC Certificate of Mailing – pdf (Related document(s) 38 Notice of Entry of Order (BNC)) No. of Notices: 18. Service Date 06/15/2007. (Admin.) (Entered: 06/15/2007)
06/15/2007	42	BNC Certificate of Mailing – pdf (Related document(s) 39 Notice of Entry of Order (BNC)) No. of Notices: 18. Service Date 06/15/2007. (Admin.) (Entered: 06/15/2007)

06/18/2007	43	Notice of Appeal. Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM. (Fee Amount $255) (Related document(s) 35 Order (BNC).) (Attachments: # 1 Exhibit Exhibit A# 2 Exhibit Exhibit B# 3 Exhibit Exhibit C) (BURKE, CHRISTOPHER) (Entered: 06/18/2007)
06/18/2007	44	Receipt of Filing Fee for Notice of Appeal(06-11566-bam) [appeal,ntcapl] (255.00). Receipt number 4144113, fee amount $ 255.00. (U.S. Treasury) (Entered: 06/18/2007)
06/19/2007	45	Appeal Reference Number 07-11 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.) (Holmes, DH) (Entered: 06/19/2007)
06/19/2007	46	Motion for Leave to Appeal *Interlocutory Order* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM) (BURKE, CHRISTOPHER) (Entered: 06/19/2007)
06/19/2007	47	Notice of Referral of Appeal to BAP. Appeal Reference # 07-11 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW

		RANSOM.)(Holmes, DH) (Entered: 06/19/2007)
06/19/2007	48	Transmittal Memorandum (BAP). Appeal Reference # 07-11 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Holmes, DH) (Entered: 06/19/2007)
06/19/2007	49	Appeal Memorandum. Appeal Reference # 07-11 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.) (Holmes, DH) (Entered: 06/19/2007)
06/20/2007	50	Certificate of Service *of Notice of Appeal* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM) (BURKE, CHRISTOPHER) (Entered: 06/20/2007)
06/25/2007	51	Memorandum from BAP Re: Transfer to USDC. Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Holmes, DH) (Entered: 06/28/2007)
07/04/2007	52	Appellant Designation. Appeal Reference # 07-11 *of Contents for Inclusion in Record on Appeal, and* Filed by

		CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM, Statement of Issues. Appeal Reference # 07-11 Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.) (BURKE, CHRISTOPHER) (Entered: 07/04/2007)
07/06/2007	53	Certificate of Service *of Mailing of Designation of Contents for Inclusion in Record on Appeal, and Statement of Issues* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 52 Appellant Designation,, Statement of Issues, filed by Debtor JASON MATTHEW RANSOM) (BURKE, CHRISTOPHER) (Entered: 07/06/2007)
07/19/2007	54	Transcript. Date of Hearing: January 25, 2007 (CLINE TRANSCRIPTION SERVICES,) (Entered: 07/19/2007)
08/06/2007	56	Memorandum from BAP Re: Transfer to USDC. Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Holmes, DH) (Entered: 08/08/2007)

08/08/2007	55	Notice of Filing Official Transcript. Review Transcript 8/20/2007. (Related document(s) 54 Transcript) (Holmes, DH) (Entered: 08/08/2007)
08/08/2007	57	Certificate of Readiness (BAP). Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.) (Holmes, DH) (Entered: 08/08/2007)
08/10/2007	58	BNC Certificate of Mailing. (Related document(s) 55 Notice of Filing Official Transcript) No. of Notices: 20. Service Date 08/10/2007. (Admin.) (Entered: 08/10/2007)
08/23/2007	59	Order Granting Leave to Appeal. Appeal Reference # 07-11 BAP # NV-1254 (Related document(s) 43, Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Holmes, DH) (Entered: 08/23/2007)
10/26/2007	60	Application for Compensation *and Reimbursement of Expenses* for CHRISTOPHER PATRICK BURKE, Fees: $14,271.00, Expenses: $419.89. Filed by CHRISTOPHER PATRICK BURKE (BURKE, CHRISTOPHER) (Entered: 10/26/2007)
10/26/2007	61	Notice of Hearing/Motion *of Application for Compensation and Reimbursement of Expenses ($500.00 or over)* Hearing scheduled 11/29/2007

		at 02:30 PM at BAM-Courtroom 3, Foley Federal Bldg. Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 60 Application for Compensation) (BURKE, CHRISTOPHER) (Entered: 10/26/2007)
10/30/2007	62	Certificate of Service *of Mailing of Notice of Application and Application. for Compensation and Reimbursement of Expenses ($500.00 or Over)* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document (s) 60 Application for Compensation, 61 Notice of Hearing/Motion, filed by Debtor JASON MATTHEW RANSOM) (Attachments: # 1 RansomJ Matrix) (BURKE, CHRISTOPHER) (Entered: 10/30/2007)
11/20/2007	63	Motion For Sanctions for Violation of the Automatic Stay Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Attachments: # I Exhibit Exhibit A# 2 Exhibit Exhibit B# 3 Exhibit Exhibit C# 4 Exhibit Exhibit D# 5 Exhibit Exhibit E# 6 Exhibit Exhibit F)(BURKE, CHRISTOPHER) (Entered: 11/20/2007)
11/20/2007	64	Notice of Hearing/Motion *and Motion for Sanctions for Violation of*

		Automatic Stay Hearing scheduled **12/20/2007 at 02:30 PM at BAM-Courtroom 3, Foley Federal Bldg.** Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 63 Motion for Sanctions for Violation of the Automatic Stay, filed by Debtor JASON MATTHEW RANSOM) (BURKE, CHRISTOPHER) (Entered: 11/20/2007)
11/29/2007	65	Certificate of Service *of Mailing of Notice of Motion and Motion for Sanctions for Violation of Automatic Stay* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 64 Notice of Hearing/Motion, filed by Debtor JASON MATTHEW RANSOM, 63 Motion for Sanctions for Violation of the Automatic Stay, filed by Debtor JASON MATTHEW RANSOM) (Attachments: # 1 Ransom J) (BURKE, CHRISTOPHER) (Entered: 11/29/2007)
11/29/2007	66	**Virtual Minute Entry in reference to hearing On: 11/29/2007 Subject:** APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR CHRISTOPHER PATRICK BURKE, FEES: $14,271.00, EXPENSES:

		$419.89. FILED BY CHRISTOPHER PATRICK BURKE. **Appearances:** MARIANNE GATTI, ATTORNEY FOR RICK YARNALL, TRUSTEE; CHRISTOPHER PATRICK BURKE, ATTORNEY FOR JASON MATTHEW RANSOM. **Proceedings:** CONTINUED TO 12/13/07 @ 2:30 PM. (vCal Hearing ID (88206)). (related document(s) 60)Hearing scheduled 12/13/2007 at 02:30 PM at Foley Bldg,Third Floor. (Whitehouse, HL) (Entered: 11/30/2007)
12/03/2007	67	Supplement *to Fee Application* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 60 Application for Compensation) (BURKE, CHRISTOPHER) (Entered: 12/03/2007)
12/19/2007	68	Order Approving Application for Compensation and Reimbursement of Expenses ($500.00 or Over) (Related document(s) 60) for CHRISTOPHER PATRICK BURKE, Fees awarded: $14271.00, Expenses awarded: $419.89 (Fisher, MD) (Entered: 12/19/2007)
12/27/2007	77	(copy) Opinion Appeal Reference # 07-11 BAP # NV-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW

		RANSOM.)(Lyons, MK) (Entered: 03/14/2008)
12/27/2007	78	(copy) Certification To The UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT Appeal Reference # 07-11 BAP # NV-1254 Filed by BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Lyons, MK) (Entered: 03/14/2008)
12/27/2007	79	Judgment Re: Appeal. Appeal Reference # 07-11 BAP # NV-1254 Close Appeal 2/25/2008. (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Lyons, MK) (Entered: 03/14/2008)
12/27/2007	80	Certificate of Service Filed by BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT (Related document(s) 79 Final Order Re: Appeal filed by Interested Party BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT) (Lyons, MK) (Entered: 03/14/2008)
01/04/2008	69	Opinion, Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW

		RANSOM.)(Graham, JM) (Entered: 01/04/2008)
01/10/2008	70	(NONCONFORMING ENTRY) Memorandum from BAP Re: Transfer to USDC. Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Fisher, MD) Modified on 1/22/2008 to reflect docket entry change-see #72 (Lyons, MK). (Entered: 01/14/2008)
01/10/2008	72	Transmittal to 9th Circuit. Appeal Reference # 07-11 BAP # NV-07-1254 (Related document(s) 43 Notice of Appeal, filed by Debtor JASON MATTHEW RANSOM.)(Lyons, MK) (Entered: 01/22/2008)
01/17/2008	71	Order Regarding Motion for Sanctions for Violation of Automatic Stay (Related Doc # 63) (Fisher. MD) (Entered: 01/17/2008)
01/24/2008	73	Stipulation By JASON MATTHEW RANSOM and Between Trustee, Rick A. Yarnall *Regarding Disbursement of Attorney Fees* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 68 Order on Application for Compensation) (BURKE, CHRISTOPHER) (Entered: 01/24/2008)

01/24/2008	74	Order Granting Stipulation to Disburse Attorney Fees (Related document(s) 73 Stipulation, filed by Debtor JASON MATTHEW RANSOM.) (Fisher, MD) (Entered: 01/24/2008)
02/27/2008	75	Notice of Entry of Order *Granting Stipulation to Disburse Attorney Fees* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 74 Stipulated/Agreed Order) (BURKE, CHRISTOPHER) (Entered: 02/27/2008)
03/03/2008	76	Certificate of Service *of Mailing of Notice of Entry of Order Granting Stipulation to Disburse Attorney Fees* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 75 Notice of Entry of Order filed by Debtor JASON MATTHEW RANSOM, 74 Stipulated/Agreed Order) (BURKE, CHRISTOPHER) (Entered: 03/03/2008)
06/25/2008	81	Application for Compensation *and Reimbursement of Expenses ($500.00 or Over)* for CHRISTOPHER PATRICK BURKE, Fees: $9,720.00, Expenses: $958.40. Filed by CHRISTOPHER PATRICK BURKE (BURKE, CHRISTOPHER) (Entered: 06/25/2008)

06/25/2008	82	Notice of Hearing *of Application for Compensatin and Reimbursement of Expenses ($500.00 or Over)* Hearing scheduled 7/17/2008 at 03:00 PM at BAM-Courtroom 3, Foley Federal Bldg. Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document(s) 81 Application for Compensation) (BURKE, CHRISTOPHER) (Entered: 06/25/2008)
06/25/2008	83	Assignment/Transfer of Claim filed by PORTFOLIO RECOVERY ASSOCIATES, LLC (PORTFOLIO RECOVERY ASSOCIATES, LLC (dg),) (Entered: 06/25/2008)
06/25/2008	84	Certificate of Service *of Mailing of Notice of Application and Application for Compensation and Reimbursement of Expenses ($500.00 or Over)* Filed by CHRISTOPHER PATRICK BURKE on behalf of JASON MATTHEW RANSOM (Related document (s) 82 Notice of Hearing, filed by Debtor JASON MATTHEW RANSOM, 81 Application for Compensation) (Attachments: # 1 Ransom J Matrix) (BURKE, CHRISTOPHER) (Entered: 06/25/2008)
06/26/2008	85	Notice of Assignment of Claim and Pending Order Thereon. (Related

		document(s) 83 Assignment/Transfer of Claim filed by Creditor PORTFOLIO RECOVERY ASSOCIATES, LLC) (Fisher, MD) (Entered: 06/26/2008)
06/28/2008	86	BNC Certificate of Mailing. (Related document(s) 85 Notice of Assignment of Claim and Pending Order Thereon) No. of Notices: 1. Service Date 06/28/2008. (Admin.) (Entered: 06/28/2008)
07/28/2008	87	Order Approving Application for Compensation and Reimbursement of Expenses ($500.00 or Over) (Related document(s) 81) for CHRISTOPHER PATRICK BURKE, Fees awarded: $9720.00, Expenses awarded: $958.40 (Hooks, SL) (Entered: 07/28/2008)
11/13/2009	88	Creditor Request for Notices with Certificate of Service Filed by BRICE, VANDER LINDEN & WERNICK, P.C. (hb) on behalf of PENNYMAC LOAN SERVICES, LLC (BRICE, VANDER LINDEN & WERNICK, P.C. (hb)) (Entered: 11/13/2009)
11/25/2009	89	Mandate. Appeal Reference # 07-11 BAP # NV-1254 Close Appeal 1/24/2010. (Related document(s) 43 Notice of Appeal filed by Debtor JASON MATTHEW RANSOM.)(mkl) (Entered: 11/30/2009)

01/27/2010	90	Appeal Closed. (Related document(s) 43 Notice of Appeal filed by Debtor JASON MATTHEW RANSOM) (mkl) (Entered: 01/27/2010)

U. S. Bankruptcy Appellate Panel for the Ninth Circuit

Bankruptcy Appellate Panel Docket #: 07-1254
Ransom, et al v. MBNA America Bank

06/22/2007	Rcvd NOTICE OF APPEAL filed in Bk.Ct. on 06/18/07, NOTICE OF REFERRAL, TRANSMITTAL FORM & "COPY" ORDER ON APPEAL – RE: order denying confirmation. Review Jurisdiction (VB)
06/22/2007	Filed (copy "ONLY") by Appellant Jason M. Ransom – APLT'S MOTION FOR LEAVE TO APPEAL INTERLOCUTORY ORDER. (NOTE: "Original" document filed at Bk.Ct. on 06/18/07.) [381624] (VB)
06/22/2007	[381626] NOTICE to all parties and Bk.Ct. – RE: BAP Case number assigned. (VB)
08/01/2007	Sent NOTICE TO BANKRUPTCY COURT requesting status report. (VB)
08/15/2007	[383404] Filed ORDER (Dunn, Montali, Pappas) "granting" appellant's motion for leave to appeal order. Aplt has established the factors necessary to obtain leave to appeal. A certificate of readiness has been issued by the Bk.Ct.. Thus, briefing schedule will be issued forthwith. [381624-1] [07-1254] [07-1254] [07-1254] [07-1254] (VB)

08/15/2007	CERTIFICATE OF READINESS "docketed". Briefing schedule is now set. Appellant's opening brief due 8/30/07 for Jason M. Ransom. [07-1254] (VB)
08/15/2007	[383415] Sent BRIEFING LETTER to Appellant Jason M. Ransom. Copies to all parties. Aplt's brief due: 08/30/07. (VB)
08/30/2007	Filed (orig. and 4 copies) by Appellant Jason M. Ransom – APLT'S OPENING BRIEF WITH FIVE EXCERPTS OF RECORD IN 1 VOLUME. Served on 8/29/07. Aple's brief due 9/13/07 for MBNA, America Bank. [07-1254] (VB)
09/13/2007	Filed (orig. and 4 copies) by Appellee MBNA, America Bank, N.A. – APPELLEE'S BRIEF WITH FIVE EXCERPTS IN 1 VOLUME. Served on 9/12/07. Appellant's reply brief is due 9/24/07 for Jason M. Ransom. [07-1254] (VB)
09/25/2007	Filed (orig. and 4 copies) by Appellant Jason M. Ransom – APLT'S REPLY BRIEF. Served on 9/24/07. [07-1254] (VB)
11/01/2007	CALENDARED: Pasadena, 11/28/07 at 9:00 am PST – Before (Dunn, Baum, Montali) in Courtroom 1. Parties have the option of appearing in person in Pasadena or by video conference in Las Vegas. [07-1254] (EC)

11/06/2007	"Received" from Attorney Jeremy T. Bergstrom for Appellee MBNA, America Bank – LETTER, dated 11/6/07 – RE: request to appear by video conference in Las Vegas. [07-1254] (EC)
11/13/2007	"Received" from Attorney Jeremy T. Bergstrom for Appellee MBNA, America Bank – hard copy of LETTER requesting video conference. (EC)
11/23/2007	[386825] Sent file stamped CLERK'S NOTICE – RE: HEARING BY VIDEO CONFERENCE. Parties not appearing in person shall appear by video in courtroom #2 of Foley Federal Building in Las Vegas, NV. Parties should arrive 15 mins before scheduled hearing. (FB)
11/28/2007	ARGUED AND SUBMITTED TO Dunn, Baum, Montali, [07-1254] (EC)
11/28/2007	Attorney Christopher P. Burke for Appellant Jason M. Ransom, Jeremy T. Bergstrom for Appellee MBNA, America Bank, appearing at oral argument 11/28/07. [07-1254] (EC)
12/27/2007	[387741] CASE CLOSED: "AFFIRMED" (Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Published. Dunn; Baum; Montali.) (VB)
12/27/2007	[387742] FILED AND ENTERED JUDGMENT. {EOD} Date: 12/27/07. Mandate to issue: 1/14/08. (VB)

12/27/2007	[387746] Filed (Dunn, Baum, Montali) CERTIFICATION TO THE UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT. Only District Court or the BAP involved may make a certification on request of the parties or on its own initiative while matter is pending in District Court or BAP. BAP certifies Bk.Ct. decision to the U.S. Court of Appeals for the 9th Circuit. [07-1254] (VB)
12/27/2007	LETTER AND DISPOSITION to Bk.Ct. Judge Bruce A. Markell. [07-1254] (VB)
12/27/2007	DISPOSITION AND NOTICE OF ENTRY OF JUDGMENT sent to parties, regional U.S. Trustee and Bk. Clerk. [07-1254] (VB)
12/27/2007	Hold of TEN (10) days placed on release of opinion to publishers. 1/7/08 (VB)
01/04/2008	NOTICE OF APPEAL filed by Appellant Jason M. Ransom. (Fee: $455.00; Receipt#: 40315) [07-1254] (VB)
01/07/2008	Opinion distributed to Publishers. [07-1254] (EC)
01/08/2008	[387992] CERTIFICATE OF RECORD filed and served as of 01/08/08. Notice of Appeal transmitted to parties. (Copy forwarded to 9th Circuit.) (VB)

01/08/2008	[387993] NOTICE OF FILING OF APPEAL TO NINTH CIRCUIT sent to Las Vegas, NV Bankruptcy Court. (VB)
01/15/2008	[388203] Received 9th Circuit Court of Appeals Case Number – #08-15066. (VB)
03/11/2008	MANDATE ISSUED to Bankruptcy Court Las Vegas (NVL). (VB)
04/24/2009	Record sent to Ninth Circuit on 04/24/2009; orig. (PI)
11/04/2009	Received 9th Circuit Court of Appeals Mandate on 11/04/2009; AFFIRMED; Copies sent to Dunn, Baum and Montali and Las Vegas, Bankruptcy Court. 11/06/2009 (PI)

United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 08-15066
Ransom, et al v. MBNA America Bank

01/15/2008	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting schedule as follows: CADS is past due; CADS must be filed no later than 1/22/08; appellants' opening brief is due 2/25/08; appellees' brief is due 3/26/08; appellants' optional reply brief is due 5/9/08; [08-15066] (LN)
01/15/2008	2	Received certificate of record. RT filed in DC NT. (Bap appeal) [08-15066] (LN)
02/04/2008	3	Filed Christopher P. Burke Civil Appeals Docketing Statement served on 1/22/08 (to CONFATT) [08-15066] [08-15066] (GR)
02/22/2008	4	Filed original and 15 copies Appellant Jason M. Ransom's opening brief (Informal: n) 19 pages; 5 excerpts of record (1 Exc.vol);served on 2/21/08 (minor defcy: excerpts do not comply with CR 30-1.6) Notified counsel. [08-15066] (GR)
03/03/2008	9	Entered appearance of Trustee Executive Office of United States Trustee in 08-15066. (RC)

03/03/2008	10	Filed appearance notice of P. Matthew Sutko and Sean E. Martin for Office of the United States Trustee. (RC)
03/05/2008	5	Filed Amicus Curiae National Association of Consumer Bankruptcy Attorneys in 08-15066 motion to file brief amicus curiae. Served on 03/04/2008. (FT)
03/05/2008	6	Received original and 15 copies of amicus curiae brief in 13 pages. Deficiency: Motion pending Served on. 03/04/2008 (FT)
03/07/2008	7	Filed clerk order (Deputy Clerk:CB): The motion of the National Association of Consumer Bankruptcy Attorneys for leave to file a friend of the court brief and any related filings shall be referred to the merits panel for resolution. A copy of the proffered brief shall be provided to the panel to aid resolution of the motion. Any further requests to file friend of the court briefs shall be treated in the same fashion. (TSP)
03/07/2008	8	Filed Appellant Jason M. Ransom Corrected. Excerpts of record as to Cir Rule 30-1.6 in 1 volume(s). Served on 03/05/2008. Satisfaction of minor brief deficiency. (RECORDS) (FT)

03/11/2008	11	Filed appearance notice of P. Matthew Sutko and Sean E. Martin for Office of the United States Trustee. Served on 03/07/2008. (RC)
03/24/2008	12	Filed original and 15 copies of Appellee MBNA answering brief of 29 pages. Supplemental Excerpts of record in 1 volumes.. Served on 03/24/2008. (FT)
03/31/2008	13	14 day oral extension by phone of time to Jason M. Ransom optional reply brief. Appellant Jason M. Ransom reply brief due 04/24/2008. (GS)
04/08/2008	14	Filed original and 15 copies of Amicus Curiae USA in 08-15066 amicus brief of 30 pages. Served on 04/04/2008 (FT)
04/25/2008	15	Filed original and 15 copies of Appellant Jason M. Ransom (Informal: No) reply brief of 7 pages. Served on 04/24/2008. (PK)
06/11/2008	16	Filed Appellee MBNA additional citations. Served on 06/09/2008. (records for merits panel) (RC)
06/30/2008	17	Filed Appellant Jason M. Ransom's additional citations. Served on 06/27/2008. (records for merits panel) (EL)

10/15/2008	18	Filed Appellant Jason M. Ransom additional citations. Served on 10/08/2008. (records for merits panel) (JFF)
12/22/2008	19	Filed (ECF) Amicus Curiae USA citation of supplemental authorities. Date of service: 12/22/2008. [6745587] (PS)
12/29/2008	20	Filed Trustee Executive Office of United States Trustee additional citations. no proof of service. (records for merits panel) (JFF)
01/20/2009	21	Calendar check performed. (MW)
01/22/2009	22	Filed Appellant Jason M. Ransom additional citations. Served on 01/20/2008. (records for merits panel) (JFF)
02/02/2009	23	Filed Appellee MBNA additional citations. Served on 01/28/2009. (panel) (JFF)
03/10/2009	24	Filed Appellee MBNA additional citations. Served on 10/10/2008. (records for merits panel) (JFF)
03/27/2009	25	Calendar materials being prepared. [08-15066, 08-15074, 08-15245, 07-17049, 08-10296 – [Edited 04/01/2009 by AW] – 08-15577 added in error (AM)

04/01/2009	27	UPDATED CASE CALENDARED: 06/09/2009 9:00 AM San Francisco, CA Courtroom 3 [08-15066, 08-15074, 08-15245, 07-17049, 08-10296] (AW)
04/09/2009	28	Filed (ECF) notice of appearance of William Andrew McNeal for Appellee MBNA. Date of service: 04/09/2009. [6877371] (WAM)
04/09/2009	29	Filed (ECF) notice of appearance of Gilbert B. Weisman for Appellee MBNA. Date of service: 04/09/2009. [6877374] (WAM)
04/09/2009	30	Added attorney Gilbert B. Weisman, William Andrew McNeal for MBNA (JFF)
04/24/2009	31	Notice of Oral Argument on JUNE 9, 2009 Calendar. Please return ACKNOWLEDGEMENT OF HEARING NOTICE form to: SAN FRANCISCO Office. Open attached documents to view details about your case. (AM)
04/28/2009	32	Filed clerk order (Deputy Clerk:SC): National Association of Consumer Bankruptcy Attorneys' motion for leave to file an amicus curiae brief is hereby GRANTED. (SC)
04/28/2009	33	Filed original and 15 copies of National Association of Consumer Bankruptcy Attorneys amicus brief of 13 pages. Served on 03/04/2008 (LA)

05/05/2009	34	Filed (ECF) Amicus Curiae USA Motion for miscellaneous relief [Motion of the United States as Amicus Curiae for Leave to Participate in June 9, 2009 Oral Argument]. Date of service: 05/05/2009. [6908416] (PS)
05/14/2009	35	Filed clerk order (Deputy Clerk:SC): The United States' motion filed May 5, 2009, for leave to participate in the June 9, 2009, oral argument as amicus curiae is hereby GRANTED. The United States shall have four (4) minutes of Appellee's, MBNA America Bank, N.A., time as previously agreed upon by the parties. (SC)
05/18/2009	36	Filed (ECF) notice of appearance of Catherine Bentley Sevcenko for Trustee Executive Office of United States Trustee. Date of service: 05/18/2009. [6923330] (CBS)
05/18/2009	37	Added attorney Catherine Bentley Sevcenko for USA (JFF)
06/04/2009	38	Filed (ECF) Amicus Curiae USA citation of supplemental authorities. Date of service: 06/04/2009. [6944898] (CBS)
06/09/2009	39	ARGUED AND SUBMITTED TO STEPHEN S. TROTT, M. MARGARET MCKEOWN and SANDRA S. IKUTA. (TH)

06/17/2009	40	Filed Appellant Jason M. Ransom additional citations. no proof of service. (panel) [6959921] (JFF)
06/18/2009	41	Filed (ECF) Amicus Curiae USA citation of supplemental authorities. Date of service: 06/18/2009. [6960429] (CBS)
06/24/2009	42	Filed (ECF) Amicus Curiae USA citation of supplemental authorities. Date of service: 06/24/2009. [6967008] (CBS)
06/30/2009	43	Received Appellant Jason M. Ransom notice regarding proof of service. [6979953] (JFF)
08/14/2009	44	FILED OPINION (STEPHEN S. TROTT, M. MARGARET MCKEOWN and SANDRA S. IKUTA) AFFIRMED. Judge: SST Authoring, FILED AND ENTERED JUDGMENT. [7027261] (RP)
08/18/2009	45	Per Opinion, letter from Clerk Molly Dwyer along with copy of the opinion filed 8/14/09, sent to the Senate and House Judiciary Committees. [7031476] (RP)
09/25/2009	46	Filed (ECF) Appellant Jason M. Ransom petition for panel rehearing and petition for rehearing en banc (from 08/14/2009 opinion). Date of service: 09/25/2009. [7075485] – [COURT UPDATE: Added certificate of service, certificate of compliance,

		and opinion. Resent NDA. 09/27/2009 by ASW] (CPB)
10/28/2009	47	Filed order (STEPHEN S. TROTT, M. MARGARET MCKEOWN and SANDRA S. IKUTA) The panel as constituted above has voted to deny the petition for rehearing. Judges McKeown and Ikuta have voted to deny the petition for rehearing en banc and Judge Trott so recommends. The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. The petition for rehearing and the petition for rehearing en banc are DENIED. [7110385] (SC)
11/04/2009	48	MANDATE ISSUED.(SST, MMM and SSI) [7118691] (GV)
02/04/2010	49	Received notice from the Supreme Court: petition for certiorari filed on 01/25/2010. Supreme Court Number 09-907. [7224367] (GV)
04/27/2010	50	Received notice from the Supreme Court. Petition for certiorari GRANTED on 04/19/2010. Supreme Court Number 08-15066. [7316117] (GV)

Form B6B
(10/05)

U.S. Bankruptcy Court For the District of Nevada

In re **JASON MATTHEW RANSOM**, Case No. ____________________
Debtor

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C – Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G – Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand		**CASH ON HAND**	–	**200.00**
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		**M & I BANK-CHECKING**	–	**1.00**
			BANK OF AMERICA-CHECKING	–	**1.00**
			BANK OF AMERICA-SAVINGS	–	**1.00**
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment		**HOUSEHOLD GOODS**	–	**3,000.00**

5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		**COLLECTIBLE BOOKS**	-	**300.00**
6. Wearing apparel.		**WEARING APPAREL**	-	**750.00**
7. Furs and jewelry.		**COLLEGE CLASS RING & WRIST WATCH**	-	**300.00**
8. Firearms and sports, photographic, and other hobby equipment		**CAMERAS**	-	**150.00**
		ONE POCKET TRUMPET W/ CASE AN TWO B FLAT TRUMPETS	-	**750.00**
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		**LIFE INSURANCE POLICY**	-	**119.65**
10. Annuities. Itemize and name each issuer.	X			
			Sub-Total >	**5,572.65**
			(Total of this page)	
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		**401K**	-	**29,000.00**
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		**M&I COMP. STOCK PURCHASE PLAN (1 BUY SHARE) ESOP**	-	**1,683.89**
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			

17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X		
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X		
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.	X		
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X		
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X		

Sub-Total > **30,683.89**
(Total of this page)

22. Patents, copyrights, and other intellectual property. Give particulars.	X		
23. License, franchises, and other general intangibles. Give particulars.	X		
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X		
25. Automobiles, trucks, trailers, and other vehicles and accessories.		**2004 TOYOTA CAMRY**	14,000.00
26. Boats, motors, and accessories.	X		
27. Aircraft and accessories.	X		
28. Office equipment, furnishings, and supplies.	X		
29. Machinery, fixtures, equipment, and supplies used in business.	X		

30. Inventory.	X
31. Animals.	X
32. Crops – growing or harvested. Give particulars.	X
33. Farming equipment and implements.	X
34. Farm supplies, chemicals, and feed.	X
35. Other personal property of any kind not already listed. Itemize.	X

Sub-Total > (Total of this page)	**14,000.00**
Total > (Report also on Summary of Schedules)	**50,256.54**

Form B6F
(10/05) **U.S. Bankruptcy Court for the District of Nevada**

In re **JASON MATTHEW RANSOM**, Case No. __________
Debtor

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C.§112; Fed.R.Bankr.P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. **xxxx-xxxx-xxxx-6726** **BANK OF AMERICA** **ATTN:MANAGING AGENT** **P.O.BOX 60069** **City Of Industry, CA 91716-0069**		-	**2003-2006** **CREDIT CARD**				**12,288.72**
Account No. **xxxx-xxxx-xxxx-0172** **CHASE BANKONE** **ATTN:MANAGING AGENT** **P.O.BOX 9001074** **Louisville, KY 40290-1074**		-	**2004** **CREDIT CARD**				**1,545.00**

Account No. **xxxx-xxxx-xxxx-7160** **DISCOVER CARD** **ATTN:MANAGING AGENT** **P.O.BOX30395** **Salt Lake City, UT 84130-0395**		-	**2004-2006** **CREDIT CARD**				**16,278.09**
Account No. **xxxx-xxxx-xxxx-2072** **M & I BANK** **ATTN:MANAGING AGENT** **P.O.BOX 3052** **Milwaukee, WI 53201-3052**		-	**2004-2006** **CREDIT CARD**				**12,644.35**

Subtotal (Total of this page) **42,756.16**

Account No. **xxxx-xxxx-xxxx-3515** **MBNA AMERICA** **ATTN:MANAGING AGENT** **P.O.BOX 15137** **Wilmington, DE 19886**		-	**2002-2006** **CREDIT CARD**				**32,896.73**
Account No. **xxxx-xxxx-xxxx-5968** **PROVIDIAN VISA** **ATTN:MANAGING AGENT** **P.O.BOX 660509** **Dallas, TX 75266-0509**		-	**2003-06** **CREDIT CARD**				**6,890.04**
Account No.							
Account No.							
Account No.							

Subtotal (Total of this page) **39,786.77**

Total (Report of Summary of Schedules) **82,542.93**

Form B6G **U.S. Bankruptcy Court**
(10/05) **for the District of Nevada**

In re: **JASON MATTHEW RANSOM**,
Debtor

Case No. ______________________

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R. Bankr. P. 1007(m).

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.

____

U.S. Bankruptcy Court for the District of Nevada

Form B6I
(10/05)

In re **JASON MATTHEW RANSOM** Case No. ____________
Debtor(s)

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 7, 11, 12, or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
Single	RELATIONSHIP: **None.**	AGE:

Employment:	DEBTOR	SPOUSE
Occupation	[redacted]	
Name of Employer	[redacted]	
How long employed	**5 1/2 YEARS**	
Address of Employer	[redacted] **LAS VEGAS, NV 89169**	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
1. Current monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	$ **4,132.66**	$ **N/A**
2. Estimate monthly overtime	$ **0.00**	$ **N/A**
3. SUBTOTAL	$ **4,132.66**	$ **N/A**
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ **908.66**	$ **N/A**
b. Insurance	$ **149.66**	$ **N/A**
c. Union dues	$ **0.00**	$ **N/A**
d. Other (Specify): **STOCK PURCH.**	$ **20.00**	$ **N/A**
401K	$ **247.50**	$ **N/A**
5. SUBTOTAL OF PAYROLL DEDUCTIONS	$ **1,325.82**	$ **N/A**
6. TOTAL NET MONTHLY TAKE HOME PAY	$ **2,806.84**	$ **N/A**
7. Regular income from operation of business or profession or farm. (Attach detailed statement)	$ **0.00**	$ **N/A**
8. Income from real property	$ **0.00**	$ **N/A**
9. Interest and dividends	$ **0.00**	$ **N/A**
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$ **0.00**	$ **N/A**
11. Social security or other government assistance (Specify):	$ **0.00**	$ **N/A**
12. Pension or retirement income	$ **0.00**	$ **N/A**
13. Other monthly income (Specify):	$ **0.00**	$ **N/A**
14. SUBTOTAL OF LINES 7 THROUGH 13	$ **0.00**	$ **N/A**
15. TOTAL MONTHLY INCOME (Add amounts shown on lines 6 and 14)	$ **2,806.84**	$ **N/A**

16. TOTAL COMBINED MONTHLY INCOME: $ **2,806.84**

(Report also on Summary of Schedules)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

U.S. Bankruptcy Court for the District of Nevada

Form B6J
(10/05)

In re **JASON MATTHEW RANSOM** Debtor(s) Case No. ______

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	$ 1,083.35
a. Are real estate taxes included? Yes X No ___	
b. Is property insurance included? Yes ___ No. X	
2. Utilities: a. Electricity and heating fuel	$ 100.00
b. Water and sewer	$ 120.00
c. Telephone	$ 75.00
d. Other	$ 0.00
3. Home maintenance (repairs and upkeep)	$ 60.00
4. Food	$ 300.00
5. Clothing	$ 20.00
6. Laundry and dry cleaning	$ 15.00
7. Medical and dental expenses	$ 70.00
8. Transportation (not including car payments)	$ 165.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 20.00
10. Charitable contributions	$ 0.00
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	$ 25.48
b. Life	$ 0.00
c. Health	$ 150.00
d. Auto	$ 98.86
e. Other	$ 0.00
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify)	$ 0.00
13. Installment payments: (In chapter 11, 12 and 13 cases, do not list payments to be included in the plan.)	
a. Auto	$ 0.00
b. Other	$ 0.00
c. Other	$ 0.00
d. Other	$ 0.00
14. Alimony, maintenance, and support paid to others	$ 0.00
15. Payments for support of additional dependents not living at your home	$ 0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
17. Other	$ 0.00
Other	$ 0.00
18. TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 2,302.69

19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:

______

20. STATEMENT OF MONTHLY NET INCOME	
a. Total monthly income from Line 16 of Schedule I	$ 2,806.84
b. Total monthly expenses from Line 18 above	$ 2,302.69
c. Monthly net income (a. minus b.)	$ 504.15

U.S. Bankruptcy Court for the District of Nevada

Form B22C (Chapter 13) (10/05)

In re **JASON MATTHEW RANSOM**
Debtor(s)

Case Number: ______________
(If known)

According to the calculations required by this statement:
☐ **The applicable commitment period is 3 years.**
■ **The applicable commitment period is 5 years.**
■ **Disposable income is determined under § 1325(b)(3).**
☐ **Disposable income is not determined under § 1325(b)(3).**
(Check the box as directed in Lines 17 and 23 of this statement.)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

1 **Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed.
a. ■ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.**
b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**

		Column A Debtor's Income	Column B Spouse's Income
	All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$ 4,248.56	$
3	**Income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference on Line 3. **Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.**	$ 0.00	$
4	**Rents and other real property income.** Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part IV.**		

		Debtor	Spouse
a.	Gross receipts	$ 0.00	$
b.	Ordinary and necessary operating expenses	$ 0.00	$
c.	Business income	Subtract Line b from Line a	

<table>
<tr><td></td><td><table><tr><td></td><td></td><td>Debtor</td><td>Spouse</td></tr><tr><td>a.</td><td>Gross receipts</td><td>$ 0.00</td><td>$</td></tr><tr><td>b.</td><td>Ordinary and necessary operating expenses</td><td>$ 0.00</td><td>$</td></tr><tr><td>c.</td><td>Rental income</td><td colspan="2">Subtract Line b from Line a</td></tr></table></td><td>$ 0.00</td><td>$</td></tr>
<tr><td>5</td><td>Interest, dividends, and royalties.</td><td>$ 0.00</td><td>$</td></tr>
<tr><td>6</td><td>Pension and retirement income.</td><td>$ 0.00</td><td>$</td></tr>
<tr><td>7</td><td>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.</td><td>$ 0.00</td><td>$</td></tr>
<tr><td>8</td><td>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:<table><tr><td>Unemployment compensation claimed to be a benefit under the Social Security Act</td><td>Debtor
$ 0.00</td><td>Spouse
$</td></tr></table></td><td>$ 0.00</td><td>$</td></tr>
<tr><td>9</td><td>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.<table><tr><td></td><td></td><td>Debtor</td><td>Spouse</td></tr><tr><td>a.</td><td></td><td>$</td><td>$</td></tr><tr><td>b.</td><td></td><td>$</td><td>$</td></tr></table></td><td>$ 0.00</td><td>$</td></tr>
<tr><td>10</td><td>Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</td><td>$ 4,248.56</td><td>$</td></tr>
<tr><td>11</td><td>Total. If Column B has been completed, add Line 10, Column A to Line 10, Column 8, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.</td><td colspan="2">$ 4,248.56</td></tr>
</table>

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	**Enter the amount from Line 11**	$ 4,248.56
13	**Marital Adjustment.** If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	$ 0.00
14	**Subtract Line 13 from Line 12 and enter the result.**	$ 4,248.56
15	**Annualized current monthly income for § 1325(b)(4).** Multiply the amount from Line 14 by the number 12 and enter the result.	$ 50,982.72
16	**Applicable median family income.** Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: NV b. Enter debtor's household size: 1	$ 38,506.00
17	**Application of § 1325(b)(4).** Check the applicable box and proceed as directed. ☐ **The amount on Line 15 is less than the amount on Line 16.** Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and complete Part VII of this statement. **Do not complete Parts III, IV, V or VI.** ☒ **The amount on Line 15 is not less than the amount on Line 16.** Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	**Enter the amount from Line 11.**	$ 4,248.56
19	**Marital Adjustment.** If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents, If you are unmarried or married and filing jointly with your spouse, enter zero.	$ 0.00
20	**Current monthly income for § 1325(b)(3).** Subtract Line 19 from Line 18 and enter the result.	$ 4,248.56
21	**Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 20 by the number 12 and enter the result.	$ 50,982.72
22	**Applicable median family income.** Enter the amount from Line 16.	$ 38,506.00

23 **Application of § 1325(b)(3).** Check the applicable box and proceed as directed.

- ■ **The amount on Line 21 is more than the amount on Line 22.** Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.
- ☐ **The amount on Line 21 is less than the amount on Line 22.** Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. **Do not complete Parts IV, V, or VI.**

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

24	**National Standards: food, clothing, household supplies, personal care, and miscellaneous.** Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$ 703.00
25 A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$ 293.00
25 B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. **Do not enter an amount less than zero.**	$ 0.00

a.	IRS Housing and Utilities Standards; mortgage/rental Expense	$ 968.00
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	$ 1,083.35
c.	Net mortgage/rental expense	Subtract line b from line a.

26	**Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: ______	$ 0.00

27 **Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.

Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7.

☐ 0 ☒ 1 ☐ 2 or more

Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)

$ **338.00**

28 **Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)

☒ 1 ☐ 2 or more

Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle I, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. **Do not enter an amount less than zero.**

a.	IRS Transportation Standards, Ownership Costs, First Car	$ **471.00**
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	$ **0.00**
c.	Net ownership/lease expense for Vehicle 1	Subtract line b from line a.

$ **471.00**

29 **Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 28.

Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. **Do not enter an amount less than zero.**

	a.	IRS Transportation Standards, Ownership Costs, Second Car	$ 0.00
	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	$ 0.00
	c.	Net ownership/lease expense for Vehicle 2	Subtract line b from line a.

		$ 0.00
30	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$ 950.00
31	**Other Necessary Expenses: mandatory payroll deductions.** Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$ 0.00
32	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$ 0.00
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in line 49.**	$ 0.00
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$ 0.00
35	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare. **Do not include payments made for children's education.**	$ 0.00
36	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance listed in Line 39.**	$ 0.00

37	**Other Necessary Expenses: telecommunication services.** Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or Internet services necessary for the health and welfare of you or your dependents. **Do not include any amount previously deducted.**	$ 0.00
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$ 2,755.00

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the average monthly amounts that you actually expend in each of the following categories and enter the total.	$ 149.66

a.	Health Insurance	$ 149.66
b.	Disability Insurance	$ 0.00
c.	Health Savings Account	$ 0.00
		Total: Add lines a, b, and c

40	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$ 0.00
41	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.	$ 0.00
42	**Home energy costs in excess of the allowance specified by the IRS Local Standards.** Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	$ 0.00
43	**Education expenses for dependent children less than 18.** Enter the average monthly expenses that you actually incur, not to exceed $125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$ 0.00

44	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	$ 0.00
45	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$ 0.00
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$ 149.66

Subpart C: Deductions for Debt Payment

47 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	60-month Average Payment
a.	**MOREQUITY, INC.**	**CONDOMINIUM – [Home Address Omitted] LAS VEGAS, NV 89104**	**$ 1,083.35**
			Total: Add Lines

$ 1,083.35

48 **Past due payments on secured claims.** If any of the debts listed in Line 47 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount
a.	**- NONE -**		$
			Total: Add Lines

$ 0.00

<table>
<tr><td>49</td><td>Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</td><td>$ 0.00</td></tr>
<tr><td>50</td><td>Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.
<table>
<tr><td>a.</td><td>Projected average monthly Chapter 13 plan payment.</td><td>$ 500.00</td></tr>
<tr><td>b.</td><td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td><td>x 10.00</td></tr>
<tr><td>c.</td><td>Average monthly administrative expense of Chapter 13 case.</td><td>Total: Multiply Lines a and b</td></tr>
</table></td><td>$ 50.00</td></tr>
<tr><td>51</td><td>Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.</td><td>$ 1,133.35</td></tr>
<tr><td colspan="3">Subpart D: Total Deductions Allowed under § 707(b)(2)</td></tr>
<tr><td>52</td><td>Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 38, 46, and 51.</td><td>$ 4,038.01</td></tr>
<tr><td colspan="3">Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)</td></tr>
<tr><td>53</td><td>Total current monthly income. Enter the amount from Line 20.</td><td>$ 4,248.56</td></tr>
<tr><td>54</td><td>Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.</td><td>$ 0.00</td></tr>
<tr><td>55</td><td>Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).</td><td>$ 0.00</td></tr>
<tr><td>56</td><td>Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.</td><td>$ 4,038.01</td></tr>
<tr><td>57</td><td>Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, and 56 and enter the result.</td><td>$ 4,038.01</td></tr>
<tr><td>58</td><td>Monthly Disposable Income Under § 1325(b)(2). Subtract Line 57 from Line 53 and enter the result.</td><td>$ 210.55</td></tr>
</table>

Part VI. ADDITIONAL EXPENSE CLAIMS

59 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
d.		$
	Total: Add Lines a, b, c, and d	$

Part VII. VERIFICATION

60 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)*

Date: **July 5, 2006**

Signature: **/s/ JASON MATTHEW RANSOM**

JASON MATTHEW RANSOM

(Debtor)

CHRISTOPHER P. BURKE & ASSOCIATES
Bar No.: 004093
218 S. Maryland Parkway
Las Vegas, NV 89101
Phone: (702) 385-7987

Space reserved for
Bankruptcy Clerk
ECF FILED ON 7/5/06

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA

In re:

JASON M. RANSOM,
SOCIAL SECURITY#: XXX-XX-4064
XXX-XX-
Debtor(s)

) **CASE NO.**
) BK-S-06-11566-BAM
) **CHAPTER 13**
) **CHAPTER 13 PLAN -#** 1
) **Confirmation Hearing:**
) **DATE:** **9/14/06**
) **TIME:** **1:30 P.M.**

1. **NOTICE TO CREDITORS:** This Plan proposes to pay: (X) APPROXIMATELY ( ) EXACTLY 25% percent of allowed unsecured nonpriority claim Creditors should file proof of claim regardless of the percentage in the event the percentage should increase. 0% TO ALL LATE FILED CLAIMS

2. **INCORPORATION OF CHAPTER 13 PLAN GUIDELINES:** This plan incorporates the Chapter 13 Plan Guidelines for Las Vegas, Nevada (hereinafter referred to as "Guidelines"). Any creditor may request a copy of the Guidelines from the Chapter 13 Trustee or the attorney for Debtor(s).

3. **PLAN MODIFICATION:** ( ) N/A ( ) Before ( ) After Confirmation

4. **PLAN PAYMENT SCHEDULE:**

	Amount
A. 36-months (monthly payments) $500.00 per month for 60 months	$30,000.00
B. Other Payments (non-monthly payments) Date / Payment No. Source	
C. Total minimum Plan payments (see 5. H.) (In no event shall this amount be less than the greater of (1) *Debtor(s) projected disposable income for 36 months or (2) the amount of all claims ultimately allowed in categories 5, A., B. & C of the Plan).*	$26,666.66

5. **CLASSIFICATION OF CLAIMS PAID BY TRUSTEE:**

A. **ADMINISTRATIVE CLAIMS:**

(1) Attorney Compensation:

a. Attorney Fee:	$4,000.00
b. Costs and Expenses	
Filing Fee:	$274.00
Postage & Copying:	$0.00
c. Total to be paid to Attorney: (a+b):	$4,274.00
d. Amount paid by Debtor(s):	$1,274.00
e. Estimated / Actual Post Confirmation fees / Costs:	$1,000.00
f. Amount paid through plan: (c - d - e)	$4,000.00

(2) Other Professional Compensation:
  a. Type of Professional:
    NONE
  b. Compensation $_____
  c. Reimbursable expenses / costs $_____

(3) The aforementioned administrative claims shall Be paid simultaneously with adequate protection Payments on allowed secured claims as set forth At 5. B. (3) as follows:
  a. Minimum monthly payment to attorney: $___ /mo.
  b. Minimum monthly payment to attorney: $___ /mo.

(4) Trustee Compensation: See 5. G.

B. Secured Claims:

(1) **IRS TAXES** **Amount**
  a. Type:________ Period(s): _______ $ .00
     Type:________ Period(s): _______ $__
  b. Interest Rate: ___% $__

(2) **SECURED ARREARAGES:**
  a. To: ________________ $_____
     Collateral:
     Interest rate: __% $_____
  b. To: ________________ $_____
     Collateral:
     Interest rate: __% $_____
  c. To: ________________ $_____
     Collateral:
     Interest rate: 0 % $_____
     Limited to FMV ( ) YES ( ) NO
     Monthly payment for adequate
     Protection: ( ) YES ( ) NO $___ /mo.

(3) **ALLOWED SECURED CLAIMS:**
  a. To: ________________ $_____
     Collateral:
     Interest rate: __% $_____
     Limited to FMV ( ) YES ( ) NO
     Monthly payment for adequate
     Protection: ( ) YES ( ) NO $___ /mo.
  b. To: ________________ $_____
     Collateral:
     Interest rate: __% $_____
     Limited to FMV ( ) YES ( ) NO
     Monthly payment for adequate
     Protection: ( ) YES ( ) NO $___ /mo.

c. UNSECURED PRIORITY CLAIMS:

(1) **IRS TAXES**
  a. Type: _______ Period(s) _________ $_____

(2) OTHER PRIORITY CLAIMS:
  a. To: ________________________ $_____
     For:

D. UNSECURED NONPRIORITY CLAIMS:

(1) Regular class percentage: 25 % $20,000.00

(2) Special Class Percentage: _____%
To: _______ $_____

Interest rate: 0 % $_____

E. **POST-PETITION CLAIMS**

(1) **IRS TAXES**

a. Type: ________ Period(s) __________ $_____

b. Estimated interest / penalty

(2) **OTHER POST PETITION CLAIMS:**

a. To: ____________________________ $_____
For:

F. **TOTAL CLAIMS PAID BY TRUSTEE** (Add 5A-E) $24,000.00

G. **TRUSTEE COMPENSATION:**

(1) Not to exceed 10% (Divide F. By 9) $2,666.60

H. **TOTAL PAYMENTS TO TRUSTEE (5F + 5G)** $26,666.66

6. **ORDER OF DISTRIBUTION BY TRUSTEE:** The trustee shall distribute To allowed claims in the following order:
   - **A.** Administrative Claims (unless 5. B. 3. adequate protection payment checked 'YES')
   - **B.** Secured Claim
   - **C.** Unsecured Priority Claims
   - **D.** Unsecured Nonpriority Claims

7. **DIRECT PAY SECURED CLAIMS:**

A. (1) To: MoreEquity Inc. $1,083.35/Mo
(2) Collateral: Home-[Home Address Omitted] Las Vegas, NV 89104
(3) Final Payment Date: N/A

B. (1) To: ____________________ $______/Mo
(2) Collateral:
(3) Final Payment Date: N/A

C. (1) To: ____________________ $______/Mo
(2) Collateral:
(3) Final Payment Date: N/A

8. **DIRECT PAY CO-DEBTOR CLAIMS:**

A. (1) To: ____________________
(2) Final Payment Date: __________
(3) Payment by ( ) Debtor ( ) Codebtor

9. **COLLATERAL TO BE SURRENDERED:**

A. (1) To:
(2) Collateral:

B. (1) To:
(2) Collateral:

10. **EXECUTORY CONTRACTS / UNEXPIRED LEASES:**

(3) ( ) Assume ( ) Reject

11. **LIENS TO BE AVOIDED BY MOTION:**

A. Judicial Lien to: None

B. Lien on exempt assets to:

12. LIQUIDATION VALUE COMPUTATION:

A. Value of real property from schedule A	$
B. Value of personal property from Schedule B	$
C. Less secured claims on real and personal property from Schedule D	($)
D. Less value of exemption on real and personal property from Schedule C	($)
E. Less unsecured priority claims from Schedule E	($ -0-)
F. Less estimated Chapter 7 administrative expenses and costs	($)
G. Equals minimum dividend to unsecured nonpriority claims	($)

13. SCHEDULE / STATEMENT OF FINANCIAL AFFAIRS:

Attached hereto are copies of: (1) The Summary of Schedules, (2) Schedule I (Current Income of Individual Debtor(s)), and (3) Schedule J (Current expenditures of Individual Debtor(s)). A Complete copy of the Schedules and Statement of Financial Affairs filed in this case may be obtained from the Clerk of the Bankruptcy Court or from the attorney for debtor(s).

14. DEBTOR(S) SIGNATURE(S):

/s/ Jason Ransom — 6/26/02
Debtor — **Date**

Joint Debtor — **Date**

15. ATTORNEY SIGNATURE:

/S/ CHRISTOPHER P. BURKE, ESQ.
Attorney for Debtor(s) — **Date**

RICK A. YARNALL
CHAPTER 13 BANKRUPTCY
TRUSTEE
701 Bridger Ave
Suite 820
Las Vegas, NV 89101
(702) 853-4500

E-FILED 8/25/06

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE: JASON MATTHEW RANSOM	CASE NO: BKS-06-11566-BAM CHAPTER 13 Hearing Date: September 14, 2006 Hearing Time: 1:30 pm

CHRISTOPHER P BURKE ESQ
Attorney for the Debtor

TRUSTEE'S OPPOSITION TO CONFIRMATION OF PLAN #1 COMBINED WITH TRUSTEE'S RECOMMENDATION FOR DISMISSAL

The Trustee herein, Rick A. Yarnall, hereby objects to confirmation of Plan and hereby represents the following:

The debtor(s) filed for Chapter 13 relief on 07/05/2006. The 341(a) Meeting of Creditors held on August 22, 2006 at 11:00 am was:

- concluded

The trustee objects to confirmation of the Chapter 13 Plan for the following reason(s):

- Amendments to Plan filed on Trustee's Standard Plan Form not filed
- The proposed Plan fails to provide for all of the Debtor's disposable income [11 USC 1325(b)(1)(B)] based on seeking ownership expense (line 28) for vehicle that is paid in full (i.e. luxury item, unreasonable expenses, etc.) and, as a result, the Debtor(s) has failed to file a Plan in good faith [11 USC 1325(a)]
- The debtor(s) has failed to cooperate with the Trustee [11 USC 521(3)] as the following document(s) were not provided:
    - Other: Documentation re: life insurance; Documentation re: 401(k) and Stock Purchase Plan

THEREFORE, the Trustee objects to confirmation for the foregoing reasons and recommends that this case be dismissed and that the Trustee be allowed expenses in the amount of $125.00.

Dated: 8/22/06

/s/ Rick A. Yarnall
Rick A. Yarnall,
Chapter 13 Trustee

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Attorney for Creditors
MBNA America Bank, NA and
Chase Manhattan Bank USA, NA

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

IN RE:	Case No. 06-11566-bam
JASON MATTHEW RANSOM,	Chapter 13
Debtor.	**OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN**
	Confirmation Hearing Date:)September 14, 2006)Time: 1:30 p.m.

MBNA America Bank, NA (hereinafter "MBNA") and Chase Manhattan Bank USA, NA (hereinafter "Chase"), by and through its undersigned counsel, object to the confirmation of the Debtor's proposed Chapter 13 Plan, and as grounds therefore, allege as follows:

PARTIES AND JURISDICTION

1. Jason Matthew Ransom, ("Debtor"), resides at [Home Address Omitted], Las Vegas, Nevada 89104.

2. On July 5, 2006, the Debtor filed for relief under Chapter 13 of the bankruptcy code and relief was ordered thereon.

3. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §1334(b) and 11 U.S.C. §1325.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1408 and §1409.

5. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(L).

6. MBNA is the holder of an unsecured claim against the Debtor arising from card account number xxxx-xxxx-xxxx-3515 which held a balance of $33367.95 at the time of the Chapter 13 bankruptcy filing.

7. Chase is the holder of an unsecured claim against the Debtor arising from card account number xxxx-xxxx-xxxx-0172 which held a balance of $1,515.00 at the time of the Chapter 13 bankruptcy filing.

8. MBNA and Chase represent approximately 42% of the Debtor's scheduled unsecured nonpriority debt.

9. According to Schedule I, the Debtor has a monthly net income of $2,806.84 and Schedule J reflects monthly living expenditures totaling $2,302.69 leaving $504.15 in projected disposable income.

10. The Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (hereafter "B22C") shows a monthly disposable income of $210.55.

11. The Debtor's Chapter 13 Plan proposes monthly payments of $500.00 for sixty (60) months providing approximately 25% distribution to general unsecured nonpriority creditors.

RELIEF UNDER §1325(b)(1)(B) and §1325(b)(2)(A)

B22C DISPOSABLE INCOME

12. MBNA and Chase incorporate by reference herein the allegations of paragraphs 1 through 11 above, as if fully set forth at length.

13. 11 U.S.C. §1325(b) provides that "if the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan – the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan."

14. 11 U.S.C. §1325(b)(2)(A) provides that "for purposes of this subsection, 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended – for the maintenance or support of the debtor or a dependent of the debtor, or a domestic support obligation, that first becomes payable after the date the petition is filed."

I. Disposable Income

15. MBNA and Chase assert that the Debtor should be using all of his B22C disposable income to fund his Chapter 13 Plan.

16. To comply with §1325(b), the Debtor must pay his current monthly disposable income as defined by the B22C.

17. The Court in *In re Barr*, 341 B.R.181 (Bankr. M.D. NC 2006) examined the issue of whether a debtor's disposable income should be determined by §1325(b) or by a review of Schedules I and J and held that " . . . with an above-median-income Chapter 13 debtor, the debtor's ability to pay and whether the proposed plan commits all of the debtor's disposable income must be determined under section 1325(b) . . . " In doing so, the Barr Court

reviewed the 2005 amendments to section 1325(b), finding that with regard to above-median debtors,

> . . . it appears that Congress intended to adopt a specific test to be rigidly applied rather than a standard to be applied according to the facts and circumstances of the case. Calculating "disposable income" for above-median-income debtors under new section 1325(b) is now separated from a review of Schedules I and J and no longer turns on the court's determination of what expenses are reasonably necessary for the debtor's support. If, as in the present case, the debtor has current monthly income that, when annualized, is greater than the applicable median family income, the debtor is subject to section 1325(b)(3), which provides:
>
> > Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2) . . .
>
> The use of "shall" in section 1325(b)(3) is mandatory and leaves no discretion with respect to the expenses and deductions that are to be deducted in arriving at disposable income. The legislative history reflects that Congress was aware that section 1325(b)(3) represented a departure from using the debtor's actual expenses in favor of IRS

> standards that might differ markedly from the debtor's actual expenses.

Id. at 6-7.

18. The Court in *In re McGuire*, 342 B.R. 608 (Bankr. W.D. MO 2006) examined this issue as well and found that "[f]or above-median debtors such as the McGuires . . . "disposable income" now means "current monthly income" (the historical calculation), less amounts reasonably necessary to be expended as determined in accordance with §707(b)(2)(A) and (B). n7 This calculation is performed in Parts IV and VI on Form B22C." Id. at * 7 (footnote omitted).

19. In following the *Barr Court*, as discussed *supra*, the Court in *In re Alexander*, 344 B.R. 742 (Bankr. E.D. NC June 30, 2006), found as follows:

> This Court agrees with the opinion rendered by the Bankruptcy Court for the Middle District of North Carolina that the debtor's disposable income must be determined under §1325(b) and not as an element of good faith under §1325(a)(3). *In re Barr*, 341 B.R. 181, 186 (Bankr. M.D.N.C. 2006); see also Marianne B. Culhane & Michaela M. White, *Catching Can-Pay Debtors: Is the Means Test the Only Way?*, 13 Am. Bankr. Inst. L. Rev. 665, 6821 (2005) (quote omitted). So long as the debtor calculates the projected disposable income with specific reference to the new definition of disposable income and commits that projected disposable income to pay unsecured creditors for

> the applicable commitment period, she is in good faith compliance with the Code. §1325(b)(1)(B).

Id. at ** 15-16.

20. In this instance, the Debtor's disposable income is $210.55, and as he is above the applicable state median income, this is the starting point amount he must pay for 60 months to comply with §1325(b)(1)(B).

II. No Car Payment, No Deduction

21. According to Schedule B, the Debtor reports ownership of one automobile. According to Schedules D and G, the Debtor does not report any secured claims or leases for the automobile.

22. The Debtor takes a $471.00 deduction at line 28 of the B22C for a first automobile ownership expense. According to the Debtor's Schedule D, the Debtor does not have a secured automobile. MBNA and Chase assert that if an automobile is not secured and, therefore, the Debtor does not actually have a car payment on it, the Debtor should not be allowed the ownership deduction for the automobile.

23. In *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Texas 2006), the Court disallowed a debtor's deduction for a car on which she had no payment.

> Shortly before the confirmation hearing, the debtor amended her calculation of disposable income to claim a deduction under the Local

> Standards for a second car even though it was not subject to a note and lien or a lease agreement. The Collection Financial Standards prohibit the deduction claimed by the debtor. The standards expressly state, "The ownership costs provide maximum allowances for the *lease* or *purchase* of up to two automobiles if allowed as a necessary expense." Collection Financial Standards, www.irs.gov/individuals/articles/0,,id=96543,00.html (emphasis supplied). Because the Local Standards only provide for a deduction for automobiles that are subject to lease or purchase, they do not permit a debtor to claim an ownership deduction for a vehicle owned free and clear by the debtor.

Hardacre, supra at 728.

24. The Internal Revenue Service, 5.15.1 Financial Analysis Handbook, at Section 5.15.1.7 Allowable Expenses, No. 4B clearly states that "If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. *If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense.* Under ownership costs, separate caps are provided for the first car and second car. If the taxpayer does not own a car a standard public transportation amount is allowed." (emphasis added) A copy of the Financial Analysis Handbook can be found at www.irs.gov/irm/part5.

25. In *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. June 1, 2006), the court addressed the issue of whether a debtor who does not own or lease a vehicle, or who owns a vehicle free of liens, is permitted to claim a vehicle ownership expense under the IRS Standards, as incorporated into the Bankruptcy Code.

> According to IRS publications regarding the application of its standards, from which the court in *In re Hardacre* n13 found guidance, the ownership expense only applies to debtors who actually are obligated to pay a monthly loan or lease payment associated with a vehicle. n14 For example, the IRS' Financial Analysis Handbook expressly instructs that "if a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense," but, "if a taxpayer has no car payment, only the operating cost portion of the transportation standard is used to figure the allowable transportation expense." n15 Similarly, the IRS' Internal Revenue Manual provides that the ownership expense is allowed only for the "purchase and/or lease of a vehicle." n16 These guidelines mandate that a taxpayer cannot claim an IRS ownership expense for a vehicle they own free and clear. The court in *Hardacre* held the same was true for debtors in bankruptcy. n17
>
> n13 338 B.R. at 726.
>
> n14 Internal Revenue Manual, Financial Analysis Handbook §5.15.1.7(4)(b); see

> also Internal Revenue Manual, Future Income §5.8.5.5.2.
>
> n15 Internal Revenue Manual, Financial Analysis Handbook §5.15.1.7(4)(b) (emphasis added). I note that the legislative history of BAPCPA specifically refers to the IRS Financial Analysis Handbook as the basis for determining expenses under §707(b). See H.R. Rep. 109-31(I), at 13-14 (2005), reprinted in 2005 U.S.C.C.A.N. 88, 99-100.
>
> n16 Internal Revenue Manual, Future Income §5.8.5.5.2. Moreover, even when the ownership expense is applicable because the taxpayer actually has a car or lease payment, the IRS uses its Standards as a cap, not an absolute number: the Internal Revenue Manual provides that, when considering allowances for housing and transportation, the taxpayer is allowed the amount provided by the Local Standards, or "the amount actually spent." Id.
>
> n17 *Hardacre,* 338 B.R. at 627. The court also held that debtors cannot "double dip" by claiming the IRS Standard in addition to the deduction for actual mortgage and car payments. Id. at 626.

Id. at ** 12-13.

The Court held that if a debtor is not incurring expenses for the purchase or lease of a vehicle, the debtor cannot claim a vehicle ownership expense under the IRS Standards (emphasis added). *Id.* at * 15.

26. The B22C disposable income should be $681.55 ($210.55 plus $471.00). The Plan should provide for payment of $681.55 for sixty (60) months.

27. For all the reasons set forth above, the Debtor's Chapter 13 Plan does not meet the requirements of 11 U.S.C. §1325(b)(1)(B) and §1325(b)(2)(A).

28. For all the reasons set forth above, the Court may not confirm the Debtor's Chapter 13 Plan pursuant to 11 U.S.C. §1325(b)(1)(B) and §1325(b)(2)(A).

RELIEF UNDER 11 U.S.C. §1325(a)(1)

29. MBNA and Chase incorporate by reference herein the allegations of paragraphs 1 through 28 above, as if fully set forth at length.

30. 11 U.S.C. §1325(a)(1) provides that "except as provided under in subsection (b), the court shall confirm a plan if – the plan complies with the provision of this chapter and with the other applicable provisions of this title."

31. The Debtor bears the burden of proving that requirements for confirming Chapter 13 Plan have been met. *In re Carter*, 222 B.R. 69 (Bankr.E.D.Pa. 1998); *In re Rothman*, 206 B.R. 99 (Bankr.E.D.Pa. 1997); *In re Lessman*, 159 B.R. 135 (Bankr. S.D. N.Y.1993).

32. For all the reasons set forth above, the Debtor's Chapter 13 Plan does not meet the requirements of 11 U.S.C. §1325(a)(1).

33. For all the reasons set forth above, the Court may not confirm the Debtor's Chapter 13 Plan pursuant to 11 U.S.C. §1325(a)(1).

WHEREFORE, MBNA America Bank, NA and Chase Manhattan Bank USA, NA pray this Honorable Court for an Order denying confirmation of the Debtor's Chapter 13 Plan for the reasons set forth above and for any other additional relief that the Court deems just and proper.

Respectfully Submitted,

MILES, BAUER, BERGSTROM
& WINTERS, LLP

BY: /s/ Jeremy T. Bergstrom
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Date: 09/05/06

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Bankruptcy Appellate Panel of the Ninth Circuit

[Title Omitted In Printing]

[SEAL] **Internal Revenue Service**
United States Department of the Treasury

Part 5. Collecting Process
Chapter 15. Financial Analysis
Section 1. Financial Analysis Handbook

5.15.1 Financial Analysis Handbook

- 5.15.1.1 Expectations
- 5.15.1.2 Analyzing Financial Information
- 5.15.1.3 Verifying Financial Information
- 5.15.1.4 Shared Expenses
- 5.15.1.5 Internal Sources
- 5.15.1.6 External Sources
- 5.15.1.7 Allowable Expense Overview
- 5.15.1.8 National Standards
- 5.15.1.9 Local Standards
- 5.15.1.10 Other Expenses
- 5.15.1.11 Determining Individual Income
- 5.15.1.12 Business Entities
- 5.15.1.13 Business Expenses
- 5.15.1.14 Determining Business Income
- 5.15.1.15 Assets

- 5.15.1.16 Determining Equity in Assets
- 5.15.1.17 Jointly Held Assets
- 5.15.1.18 Income-Producing Assets
- 5.15.1.19 Assets Held By Others as Transferees, Nominees or Alter Egos
- 5.15.1.20 Cash
- 5.15.1.21 Securities
- 5.15.1.22 Life Insurance
- 5.15.1.23 Retirement or Profit Sharing Plans
- 5.15.1.24 Furniture, Fixtures, and Personal Effects
- 5.15.1.25 Motor Vehicles, Aircraft and Vessels
- 5.15.1.26 Real Estate
- 5.15.1.27 Mortgage and Real Estate Loans
- 5.15.1.28 Accounts and Notes Receivable
- 5.15.1.29 Inventory
- 5.15.1.30 Machinery and Equipment
- 5.15.1.31 Tax-Exempt Securities
- 5.15.1.32 Loans to Shareholders
- 5.15.1.33 Intangible Assets
- 5.15.1.34 Cash Flow Analysis
- 5.15.1.35 Making the Collection Decision
- 5.15.1.36 Business Entity and Collection

- Exhibit 5.15.1-1 Questions and Answers to Assist in Financial Analysis (Reference: 5.15.1.3)
- Exhibit 5.15.1-2 Financial Analysis: On-Line Access to the Allowable Expense Tables (Reference 5.15.1)

5.15.1.1 (05-01-2004)
Expectations

1. This chapter provides instructions for analyzing the taxpayer's financial condition.
2. An interview should be conducted in order to determine the appropriate case resolution, Complete income and expense analysis is necessary only if the taxpayer does not full pay, however secure a complete Collection Information Statement upon initial contact.
3. The analysis of a taxpayer's financial condition provides a basis to make one or more of the following decisions:
   - A. Request payment in full or in part from available assets
   - B. File a Notice of Federal Tax Lien (IRM 5.12)
   - C. Initiate enforcement action if assets are available to pay the liability and the taxpayer is unwilling to voluntarily convert assets to cash (IRM 5.10)
   - D. Enter into an Installment Agreement (IRM 5.14)

   E. Explain the Offer in Compromise provisions (IRM 5.8)

   F. Report the account Currently not Collectible (IRM 5.16)

4. The taxpayer's financial information may be secured on:

   A. Form 433-A, Collection Information Statement (CIS) for Wage-earners and Self-employed Individuals

   B. Form 433-B, Collection Information Statement for Businesses

   C. Form 433-F, Collection Information Statement – Used by the Automated Collection System (ACS) and the campuses for individuals owing less than $100,000.

   D. A business taxpayer's own financial statement (income statement and balance sheet) can be used as a substitute for the income and expense section of the Form 433-B.

5. National and local standards are guidelines established by the Service to provide consistency in certain expense allowances such as groceries and household expenses, housing and transportation. Reference to these standards will be found throughout this section. Exhibit 5.15.1-2 provide instructions for online access to the actual standards for the income levels and locales.

6. The standard amounts set forth in the national and local guidelines are designed to

account for basic living expenses. In some cases, based on a taxpayer's individual fact's and circumstances, it may be appropriate to deviate from the standard amount when failure to do so will cause the taxpayer economic hardship. The taxpayer must provide reasonable substantiation of all expenses claimed that exceed the standard amount. Document the case file accordingly. For example:

- bank statements or canceled checks
- credit card vouchers
- rent/lease receipts and lease agreements
- payment coupons
- court orders
- contracts
- future expenses, e.g. the birth of a child or the necessary replacement of a car that will increase expenses.

  Example: *A taxpayer with physical disabilities or an unusually large family requires a housing cost that is not anticipated by the local standard. The taxpayer is required to provide copies of mortgage or rent payments, utility bills and maintenance costs to verify the necessary amount.*

7. Analysis and verification of a Collection Information Statement (CIS) should take place shortly after receipt of the CIS. The ability to pay determination based on this analysis

will be communicated to the taxpayer within a reasonable amount of time after receipt of the CIS.

8. Collection Information Statements submitted by taxpayers should reflect information no older than the prior six months. If during the investigation of the case, the information becomes older than 12 months, update the information. If there is reason to believe that the taxpayer's situation may have significantly changed, secure a new Collection information Statement.

9. Secure, review and discuss the financial statements in person whenever possible. While some aspects of the financial statement review process, such as securing financial information, can occur by phone or correspondence, a face to face meeting with the taxpayer and/or his/her representative is preferred to effectively facilitate the verification/validation of the financial statements provided. This face to face interview should be conducted at the taxpayer's business, residence or in the office unless the taxpayer is physically unable to meet with the revenue officer. The physical verification of the business assets is required at some point early in the financial statement review process and should be conducted in the presence of the taxpayer and/or representative.

10. Emphasize to the taxpayer how much we expect from them rather than how we expect them to spend their money.

A. Advise the taxpayer that we expect an amount equal to that amount in excess of necessary or not allowable conditional expenses.

B. Advise the taxpayer that he or she is responsible for determining what modifications are needed in order to pay their liabilities. Do not tell the taxpayer what he or she can or cannot own.

* * *

5.15.1.3 (05-01-2004)
Verifying Financial Information

1. When conducting interviews to secure and/or review financial statements ask pertinent questions to determine as much as possible about the taxpayer's financial condition and document the results. For example:

    A. How the taxpayer generates income, both foreign and domestic.

    B. The nature of their business process.

    C. The main products/services, type of customers, wholesale vs. retail, etc.

    D. Major suppliers and competitors.

    E. Assets held in the name of the taxpayer or on their behalf, both foreign and domestic.

2. Observe and document the physical layout of the business, the number of employees, the type and location of equipment, machinery, vehicles and inventory. A brief tour of the

business premises may help to gauge the business operation and the condition of assets.

3. A thorough verification of the Collection Information Statement (CIS) involves reviewing information available from internal sources and requesting that the taxpayer provide additional information or documents that are necessary to determine reasonable collection potential. Consider contacting third parties to verify or obtain information (see IRM 5.1.17).

4. Collection issues that have been previously addressed during a balance due investigation by field personnel in the preceding 12 months will not be re-examined unless there is convincing evidence that such reinvestigation is absolutely necessary.

   Example: *If the previous revenue officer has completed a full CIS analysis within the last 12 months including verification of assets, income, and expenses and has made a determination of Fair Market Value of assets, equity in assets and monthly ability to pay, the information should not be reinvestigated unless there is reason to believe the taxpayer's situation has significantly changed.*

5. A taxpayer is not required to substantiate expenses that are categorized as National Standards unless they exceed the Standard.

6. A taxpayer may be required to substantiate expenses that are categorized as Local Standards or Other Necessary Expenses (LEM 5.3.1).

7. Substantiation of expense amounts could include items like bank statements, credit cards vouchers, rent/lease receipts and leases, payment coupons, court orders, contracts, and canceled checks. Document how obligations are being met and the source of funds. Taxpayers who own realty should provide documents showing the monthly payment, the purchase price, date of purchase, and the principal amount due. When obtaining documents for substantiation, ask the taxpayer for copies, not original documents. If necessary, secure telephone numbers and contact names of creditors. These can be used if verification is necessary.

8. When analyzing expenses for a business taxpayer, ensure that business expenses are not included under personal expenses. Compare the 433-A and 433-B to income tax returns to verify assets and income or analyze bank deposits.

   Example: *Taxpayer claims the lease payment of an automobile for business and personal use. The expense will not be allowed as part of the transportation expense on the 433-A.*

9. Secure third party information such as bank deposit records, government agency records, competitors or suppliers to determine the

source of funds of the taxpayer. Ensure that third party notice requirements are met (refer to IRM 5.1.17, Third Party Contacts). Use summons authority to secure leads to assets and income (refer to IRM 25.5, Summons).

10. Compare income to expenses. If expenses exceed income, ask the taxpayer probing questions to determine alternate sources of income that may be supplementing his/her income. Look for and consider:

    - "non-cash expenses" such as depreciation or amortization of assets
    - "book value" vs. Fair Market Value (FMV)
    - non-payment of accounts receivables (in dispute)
    - down-sizing/insolvent (a viable business)
    - roommate(s) or rental income
    - commingling of funds between unrelated entities

    On business accounts, determine if there are "non-cash" expenses such as depreciation or amortization. Also consider a commingling of funds between related entities. Examine prior year returns to detect sporadic income. Review bank deposits for the past 3-6 months to determine the taxpayer's stated income.

* * *

5.15.1.7 (05-01-2004)
Allowable Expense Overview

1. Allowable expenses include those expenses that meet the necessary expense test. *The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income.* The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live.
2. There are three types of necessary expenses:
    - National Standards
    - Local Standards
    - Other Expenses
3. National Standards: These establish standards for reasonable amounts for five necessary expenses. Four of them come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey: food, housekeeping supplies, apparel and services, and personal care products and services. The fifth category, miscellaneous, is a discretionary amount established by the Service. It is $100 for one person and $25 for each additional person in the taxpayer's household.

    Note:

    All five standards are included in one total national standard expense.

4. Local Standards: These establish standards for two necessary expenses: housing and transportation. Taxpayers will be allowed the local standard or the amount actually paid, whichever is less.

   A. Housing – Standards are established for each county within a state. When deciding if a deviation is appropriate, consider the cost of moving to a new residence; the increased cost of transportation to work and school that will result from moving to lower-cost housing and the tax consequences. The tax consequence is the difference between the benefit the taxpayer currently derives from the interest and property tax deductions on Schedule A to the benefit the taxpayer would derive without the same or adjusted expense.

   B. Transportation – The transportation standards consist of nationwide figures for loan or lease payments referred to as ownership cost, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs were derived from BLS data. If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense. Under ownership costs, separate caps are provided for the first car and second car. If the taxpayer does not own a car a standard public transportation amount is allowed.

5. Other – Other expenses may be allowed if they meet the necessary expense test. The amount allowed must be reasonable considering the taxpayer's individual facts and circumstances.

6. Conditional expenses. These expenses do not meet the necessary expenses test. However, they are allowable if the tax liability, including projected accruals, can be fully paid within five years.

7. National local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

8. Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. Verify exemptions claimed on taxpayer's income tax return meet the dependency requirements of the IRC. There may be reasonable exceptions. Fully document the reasons for any exceptions. For example, foster children or children for whom adoption is pending.

9. A deviation from the local standard is not allowed merely because it is inconvenient for the taxpayer to dispose of valued assets.

10. Revenue officers should consider the length of the payments. Although it may be appropriate to allow for payments made on the secured debts that meet the necessary expense test, if the debt will be fully repaid in one year only allow those payments for one year.

5.15.1.8 (05-01-2004)
National Standards

1. National standards include the following expenses:

   A. Apparel and services. Includes shoes and clothing, laundry and dry cleaning, and shoe repair.

   B. Food. Includes all meals, home and away.

   C. Housekeeping supplies. Includes laundry and cleaning supplies; other household products such as cleaning and toilet tissue, paper towels and napkins; lawn and garden supplies; postage and stationary; and other miscellaneous household supplies.

   D. Personal care products and services. Includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances.

E. Miscellaneous. A discretionary allowance of $100 for one person and $25 for each additional person in a taxpayer's family.

2. Allow taxpayers the total national standard amount for their income level.

   Example: *The taxpayer's expenses are: housekeeping supplies – $150, clothing – $150, food – $600, miscellaneous – $400 (Total Expenses – $1,300). The taxpayer is allowed the national standard of $1,100.*

3. A taxpayer that claims more than the total allowed by the national standards must substantiate and justify each separate expense of the total national standard amounts.

   Example: *A taxpayer may claim a higher food expense than allowed. Justification would be based on prescribed or required dietary needs.*

5.15.1.9 (05-01-2004)
Local Standards

1. Local standards include the following expenses:

   A. Housing and Utilities. The utilities include gas, electricity, water, fuel, oil, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone. Housing expenses include: mortgage or rent, property taxes, interest, parking, necessary maintenance and repair, homeowner's or renter's insurance, homeowner dues and condominium fees. Usually, this is considered necessary only for the place of residence. Any other housing expenses should be allowed only if, based on a taxpayer's individual facts and circumstances, disallowance will cause the taxpayer economic hardship.

B. Transportation. Vehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver's license, public transportation. Transportation costs not required to produce income or ensure the health and welfare of the family are not considered necessary. Consider availability of public transportation if car payments (purchase or lease) will prevent the tax liability from being paid in part or full. Public transportation costs could be an option if it does not significantly increase commuting time and inconvenience the taxpayer.

Note:

If the taxpayer has no car payment, or no car, question how the taxpayer travels to and from work, grocer, medical care, etc. The taxpayer is only allowed the operating cost or the cost of transportation.

5.15.1.10 (05-01-2004)
Other Expenses

1. Other expenses may be considered if they meet the necessary expense test – they must provide for the health and welfare of the taxpayer and/or his or her family or they must be for the production of income. This is determined based on the facts and circumstances of each case.
2. If other expenses are determined to be necessary and, therefore allowable, document the reasons for the decision in your history.
3. The amount allowed for necessary or conditional expenses depends on the taxpayer's ability to full pay the liability within five years and on the taxpayer's individual facts and circumstances. If the liability can be paid within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses. If the taxpayer cannot pay within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses for up to one year in order to modify or eliminate the expense. *(See IRM 5.14, Installment Agreements)*

Expense Item	Expense is Necessary if:	Notes/Tips
Accounting and legal fees.	Representation before the Service is needed or meets the necessary expense test. Amount must be reasonable.	Disallow any other accounting or legal fees. Disallow costs not related to solving current liability.
Charitable contributions *(Donations to tax exempt organizations)*	If it is a condition of employment or meets the necessary expense tests. Example: A minister is required to tithe according to his employment contract.	Disallow any other charitable contributions that are not considered necessary. Example: Review the employment contract.
Child Care *(Baby-sitting, day care, nursery and preschool)*	It meets the necessary expense test. Only reasonable amounts are allowed.	Cost of child care can vary greatly. Do not allow unusually large child care expense if more reasonable alternatives are available. Consider the age of the child and if both parents work.

Court-Ordered Payments *(Alimony, child support, including orders made by the state, and other court ordered payments)*	If court ordered and being paid, they are allowable. If payments are not being made, do not allow the expense. Child support payments for natural children or legally adopted dependents may be allowed.	Review the court order.
Dependent Care *(For the care of the elderly, invalid, or handicapped.)*	If there is no alternative to the taxpayer paying the expense.	
Education	It is required for a physically or mentally challenged child and no public education providing similar services is available. Also allowed only for the taxpayer and only if required as condition of employment.	**Example:** An attorney must take so many education credits each year or they will not be accredited and could eventually lose their license to practice before the State Bar. A teacher could lose their position or in some States their pay is commensurate with their education credits.

Health Care	Required for the health and welfare of the family. Elective surgery would not be allowed such as plastic surgery or elective dental work. The taxpayer must provide proof of excessive out of pocket medical expenses.	To determine monthly expenses, the total out of pocket expenses would be divided by 12. The Schedule A may also be used to determine the yearly expense. Ensure that the amount used is out of pocket after insurance claims are paid. Substantiate that payments are being made.
Involuntary Deductions	If It is a requirement of the job; i.e. union dues, uniforms, work shoes.	To determine monthly expenses, the total out of pocket expenses would be divided by 12.
Life Insurance	If it is a term policy on the life of the taxpayer only.	If there are whole life policies, these should be reviewed as an asset for borrowing against or liquidating. Life insurance used as an investment is not a necessary expense.

Secured or legally perfected debts	If it meets the necessary expense test.	Taxpayer must substantiate that the payments are being made.
Unsecured Debts	If the taxpayer substantiates and justifies the expense, the minimum payment may be allowed. The necessary expense test of health and welfare and/or production of income must be met. Except for payments required for the production of income, payments on unsecured debts will not be allowed if the tax liability, including projected accruals, can be paid in full within 90 days.	Examples of unsecured debts which may be necessary expenses include: Payments required for the production of income such as payments to suppliers and payments on lines of credit needed for business and payment of debts incurred in order to pay a federal tax liability.
Taxes	It is for current federal, FICA, Medicare, state and local taxes.	Current taxes are allowed regardless of whether the taxpayer made them

		in the past or not. Delinquent state and local taxes are allowable depending on the priority of the FTL and/or Service agreement with the state and local taxing agencies.
Optional Telephones and Telephone Services *(Cell Phone, pager, Call waiting, caller identification or long distance)*	It must meet the necessary expense test.	
Student Loans	If it is secured by the federal government and only for the taxpayer's education.	Taxpayer must substantiate that the payments are being made.
Internet Provider/ E-mail	If it meets the necessary expense test – generally for production of income.	

Repayment of loans made for payment of Federal Taxes	If the loan is secured by the taxpayer's assets when those assets are of reasonable value and are necessary to provide for the health and welfare of the family.	

* * *

U.S. Court of Appeals for the Ninth Circuit

[Title Omitted In Printing]

[SEAL] **Internal Revenue Service**
United States Department of the Treasury

Collection Financial Standards

General

Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability.

Allowances for food, clothing and other items, known as the National Standards, apply nationwide except for Alaska and Hawaii, which have their own tables. Taxpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent.

Maximum allowances for housing and utilities and transportation, known as the Local Standards, vary by location. Unlike the National Standards, the taxpayer is allowed the amount actually spent or the standard, whichever is less.

Food, Clothing and Other Items

National Standards for reasonable amounts have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous.

All standards except miscellaneous are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES). The miscellaneous standard has been established by the IRS.

Alaska and Hawaii

Due to their unique geographic circumstances and higher cost of living, separate standards for food, clothing and other items have been established for Alaska and Hawaii.

Housing and Utilities

The housing and utilities standards are derived from Census and BLS data, and are provided by state down to the county level.

Transportation

The transportation standards consist of nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA). Public transportation is included under operating costs. A conversion chart has been provided with the standards which shows which IRS districts fall under each Census Region, as well as the counties included in each MSA. The ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards.

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. The operating costs are derived from BLS data.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense.

Recent Revisions

The Local Standards for housing and utilities and transportation were revised on 02/01/06 to:

- add family size to the housing and utilities allowances (two or less, three, and four or more);
- base automobile ownership/leasing costs on the five-year average of new and used car financing data compiled by the Federal Reserve Board of Governors; and,
- reflect updated information from the Bureau of Labor Statistics.

- Housing and Utility Standards have been established in 2006 for U.S. Territories

The revised Local Standards for housing and utilities and transportation are effective for financial analysis conducted on or after January 1, 2006.

PETITIONER'S BRIEF

Supreme Court, U.S.
FILED

JUN 21 2010

No. 09-907

In The
Supreme Court of the United States

◆

JASON M. RANSOM,

Petitioner,

v.

MBNA, AMERICA BANK, N.A.,

Respondent.

◆

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

◆

BRIEF FOR PETITIONER

◆

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QUESTION PRESENTED

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

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OPINIONS BELOW

The Bankruptcy Court's memorandum denying confirmation of petitioner's Chapter 13 plan (Pet.App. 36-47) and the Bankruptcy Court's order denying confirmation (Pet.App. 48) are unreported. The opinion of the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals (Pet.App. 15-35) affirming the Bankruptcy Court is reported at 380 B.R. 799 (B.A.P. 9th Cir. 2007). The opinion of the Ninth Circuit Court of Appeals (Pet.App. 1-14) affirming the Bankruptcy Appellate Panel is reported at 577 F.3d 1026 (9th Cir. 2009). The order of the Ninth Circuit denying the petition for rehearing (Pet.App. 49) is unreported.

◆

JURISDICTION

The memorandum and order of the Bankruptcy Court were entered on June 6, 2007. Pet.App. 36, 48. The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(L). The Bankruptcy Appellate Panel of the Ninth Circuit affirmed the order of the Bankruptcy Court on December 27, 2007. Pet.App. 15. The Bankruptcy Appellate Panel had jurisdiction under 28 U.S.C. § 158(b). The order of the Ninth Circuit Court of Appeals was entered on August 14, 2009. Pet.App. 1. The Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(d). The Ninth Circuit denied petitioner's timely motion for rehearing on October

28, 2009. Pet.App. 49. Petitioner timely filed his petition for *certiorari* on January 25, 2010. This Court granted the petition on April 19, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

◆

STATUTORY PROVISIONS INVOLVED

The text of 11 U.S.C. §§ 707 and 1325 are reproduced in full in the appendix to the petition. Pet.App. 50-70.

◆

INTRODUCTION

Petitioner Jason Ransom filed a Chapter 13 petition. Because he had an above-median income, he had to commit to paying his unsecured creditors over a period of five years. Based on his current and expense schedules, he filed a Chapter 13 plan calling for monthly payments of $500.00 for 60 months. On Form 22C, he calculated $210.55 in disposable income based, in part, on a monthly allowance for $471.00 in vehicle ownership costs specified on Local Standards furnished by the Internal Revenue Service. The trustee objected to confirmation of Ransom's plan on the grounds that Ransom owned his car free and clear, and hence the $471.00 transportation ownership cost should be disallowed. Ransom's disposable income to pay creditors would be $681.55 a month without the ownership cost deduction for his car. The trustee's objection, and that of the unsecured creditor

MBNA America Bank, has been sustained by the Bankruptcy Court, the Bankruptcy Appellate Panel of the Ninth Circuit, and the Ninth Circuit Court of Appeals.

The long contest over a $471.00 vehicle allowance is rooted in a much larger issue of statutory interpretation. Should the vehicle allowance be granted as specified by the Local Standards published by the Internal Revenue Service, as petitioner contends? Or should the vehicle ownership deduction, in the absence of secured debt on the vehicle, be rejected, as the financial analysis and audit methodology of the IRS would conclude for tax purposes, and as appellee argues?

Although the Ninth Circuit Court of Appeals held against petitioner, the Ninth Circuit concluded its opinion by asking, in a dramatic fashion, to be relieved of the burden of deciding the transportation deduction issue. The Court of Appeals wrote:

> The "correct" answer to the question before us, which the courts have been struggling with for years – at the unnecessary cost of thousands of hours of valuable judicial time – depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary would be relieved of this Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in chapter 13 be

> allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees.

Ransom v. MBNA Am. Bank, 577 F. 3d 1026, 1031-32 (9th Cir. 2009).

The unique feature of statutory interpretation on this issue consists of assessing the interaction of two sets of rules and regulations, on the one hand, the Bankruptcy Code, and on the other hand, the Local Standards published periodically by the Internal Revenue Service. Petitioner maintains that when the means test of 11 U.S.C. § 707(b)(2) references specified Standards of the IRS as applicable deductions, then only the specified amounts are utilized, and IRS procedures in any other respect are immaterial. Appellee argues that when the Local Standards of the IRS are referenced by the Bankruptcy Code, then of necessity the IRS procedures, manuals, and financial analysis must be incorporated.

Ultimately, interpretation of an act of Congress involves not only what is said, but what is not said. If a statute were to rely on the procedures and methodology of the IRS, the statute must so state. With respect to vehicle ownership costs, the means test only tells the debtor to use the standardized expense amounts specified by the IRS. The statute does not tell us to rely on any other IRS practice regarding the ownership deduction, and therefore we may not do so.

◆

STATEMENT OF THE CASE

A. The Bankruptcy Filing

1. The debtor, Jason Ransom, filed for bankruptcy relief under chapter 13 of Title 11 of the United States Code on July 5, 2006. The jurisdiction for his filing was the U.S. Bankruptcy Court for the District of Nevada (Las Vegas). One of the debtor's assets, as listed in Schedule B of his bankruptcy petition, was a 2004 Toyota Camry, which he owned in full. J.A. 38. There were no liens or secured loans of any kind on his vehicle. The debtor listed $82,542.93 in unsecured claims, including the claim of MBNA America Bank in the amount of $32,896.73.

On Form B22C, Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Ransom reported monthly income of $4,248.56, and annual income of $50,982.72. J.A. 45-47. As a result, his income exceeded the median income for Nevada, his state of residence. As an above-the-median debtor, he was required to make plan payments for a commitment period of 5 years. Ransom reported monthly expense deductions of $4,038.01, and a monthly disposable income of $210.55. J.A. 53.

On Ransom's Form B22C, he deducted a total of $809.00 for transportation expenses. He deducted $338.00 for operating expenses for one vehicle, and this deduction has not been challenged. He also deducted $471.00 as vehicle ownership expense under the IRS Local Standards. The dispute over the proper deduction of ownership cost is the root of the present controversy.

Ransom's Schedule I, Current Income of Individual Debtor(s), lists gross monthly wages of $4,132.66, and net monthly take home pay of $2,806.84. J.A. 43. His Schedule J, Current Expenditures of Individual Debtor(s), lists monthly expenses of $2,302.69, and monthly net income of $504.15. J.A. 44. Ransom filed a Chapter 13 plan providing for monthly payments of $500.00 for sixty (60) months. J.A. 55.

There has been no change of circumstances in Ransom's income and expenses between the time of filing and plan confirmation. Neither party to this case has claimed that any unusual change in income affects the computation of projected disposable income, and no evidence was introduced in the trial court about events that would substantially change the debtor's financial situation.

B. Procedural History Of The Case

1. The trustee filed an opposition to confirmation of plan based in part on "seeking ownership expense (line 28) for vehicle that is paid in full. J.A.

59-60. MBNA America Bank, NA and Chase Manhattan Bank USA, NA, both unsecured creditors, filed an objection to confirmation of Chapter 13 Plan. J.A. 61-72. These oppositions to the plan argued that there can be no vehicle ownership cost deduction unless the owner is making car payments. Because Ransom was making no loan or lease payments on his car, the bankruptcy court issued a memorandum and order denying confirmation of Ransom's Chapter 13 Plan. Pet.App. 36, 41, 48.

2. Ransom appealed to the bankruptcy appellate panel, which affirmed. Pet.App. 15-35. The appellate panel cited numerous courts which allow the vehicle ownership expense deduction in the absence of secured debt payments, and numerous courts which disallow the vehicle ownership expense deduction in the absence of debt payments. Pet.App. 23-26. The court held that "a debtor has no right to deduct a vehicle ownership expense when he or she makes no lease or loan payments on the vehicle." Pet.App. 35.

3. Ransom appealed again, and the Ninth Circuit affirmed. Pet.App. 1-14. The appeals court rested its holding on three main grounds. First, the appeals court reasoned that deduction of ownership costs under the IRS Local Standards must be consistent with the Internal Revenue Manual approach, which only allows deductions in the event of loan or lease payments. *Id.* at 8-9. Second, the appeals court referred to BAPCPA's goal "to ensure that debtors repay creditors the maximum they can

afford." *Id.* at 10. Third, the court of appeals reasoned that there can be no "applicable" expense amounts unless loan or lease payments are incurred. *Id.* at 11-12.

4. Ransom timely sought certiorari, and this Court granted certiorari.

◆

SUMMARY OF ARGUMENT

I.

A. The debtor's right to an ownership cost deduction under the means test, even where the debtor makes no payments on car loans or leases, has been upheld by the Fifth, Seventh, and Eighth Courts of Appeals in *Tate v. Bolen,* 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary,* 549 F.3d 1148 (7th Cir. 2008); and *eCast Settlement Corporation v. Washburn,* 579 F.3d 934 (8th Cir. 2009). *Tate* and *Ross-Tousey* are cases arising under Chapter 7 of the Bankruptcy Code. *Washburn* is a case under Chapter 13 of the Bankruptcy Code. The means test is found in Chapter 7 of the Code, and applies in Chapter 13 by reference to § 1325(b)(3) for debtors with above-median income. The calculation of vehicle ownership expense under the means test will yield the same results in Chapter 7 and Chapter 13 cases.

The *Washburn* decision combines a forward-looking approach to projected disposable income and an allowance of the vehicle ownership deduction in the absence of car payments. The case involves an above-median debtor who owns his vehicle outright. The *Washburn* court distinguishes between a debtor's "disposable income," which is calculated solely on the basis of historical numbers and regional averages, and a debtor's "projected disposable income," which necessarily contemplates a forward-looking number. Disposable income is presumptively the debtor's projected disposable income. The presumption is only rebutted where there is reasonable certainty about future events, or a substantial change in circumstances, that would change the debtor's financial situation. The analysis of projected disposable income in *Washburn* is very close to the holding of this Court in *Hamilton v. Lanning,* 560 U.S. ___ (2010). The holding in *Washburn* demonstrates that the forward-looking approach to projected disposable income does not limit the debtor's right to a vehicle ownership deduction, even if the debtor makes no loan or lease payments on his vehicle.

B. Determining the proper deduction for vehicle ownership costs depends on a close reading of the means test, which helps calculate the disposable income available to a debtor for the payment of debts. Disposable income is defined as current monthly income less "amounts reasonably necessary to be expended" for the debtor's maintenance by § 1325(b)(2). The amounts which debtor can reasonably expend are found by applying the means test of 11 U.S.C. § 707(b)(2). In particular, transportation expenses, which are set by the Local Standards issued by the Internal Revenue Service, are deductable as the "debtor's applicable monthly expense amounts specified under the . . . Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

From the outset, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, recognized that there was a tension between the methodology of the Internal Revenue Service and the proper reading of the bankruptcy statute. The IRS treats the amounts in the Local Standards as caps on actual expenses, namely loan or lease payments. By contrast, the Judicial Council adopted the position in drafting bankruptcy rules and forms that the amounts specified in the Local Standards serve in the means test as allowed deductions or allowances. The treatment of a transportation expense by the IRS is not the same as its treatment for the bankruptcy code, even though the statute utilizes Standards issued by the IRS.

The position of the Judicial Council should be adopted in construing the vehicle ownership deduction. If the "amounts specified under the . . . Local Standards" were not fixed sums as set forth in the IRS tables for regions and metropolitan areas, then the deduction amounts would not be "specified" – rather, they would be caps on actual cash expenses. The statutory language states that the amounts are "specified," and the statute must prevail.

Moreover, the Judicial Council correctly ascertained that the transportation ownership/lease component may, or may not, involve debt payment. If no debt payment is involved in the vehicle ownership allowance, then the debtor may deduct the amount specified in the Local Standards. However, if the debtor makes loan or lease payments on a vehicle, then the forms require debtors to reduce the allowance for ownership expense by the average monthly loan payment. The Judicial Council's distinction between the ownership allowance, and payments on secured debt, is the appropriate interpretation of the various sections of the means test. § 707(b)(2)(A)(ii)(I) expressly excludes from expenses consideration of debt payment: "the monthly expenses of the debtor shall not include any payments for debts." If the amounts of the Local Standards were caps on car payments, as the IRS financial analysis indicates, then the exclusion of debt payment stated in § 707(b)(2)(A)(ii)(I) would be meaningless. However, the Judicial Council sensibly concludes that the debtor should not be allowed *two* ownership deductions, one for the Local Standards allowance and one for secured payments under § 707(b)(2)(A)(iii). Therefore, the § 707(b)(2)(A)(ii)(I) transportation ownership allowance (which does not reference debt payments) is reduced on the forms by average monthly loan payment amounts.

The context of how expenses are treated in § 707(b)(2)(A)(ii) makes abundantly clear that there is a distinction between fixed allowances and actual expenses. Subclause (I), which includes transportation expenses, distinguishes between "monthly expense amounts specified under the National Standards and Local Standards," and "the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service." On the one hand, the allowances under the Local Standards are "expense amounts specified," since they are fixed by the applicable tables. On the other hand, the actual expenses are computed with regard to "categories specified;" here the categories are fixed, but the amounts are not. Subclauses (II) through (IV) all refer to actual expenses. Subclause (V) distinguishes clearly between specified allowances and actual expenses: "the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs." The statutory language renders precisely that an "allowance specified by the Local Standards" is not the same thing as "actual expenses." The context makes clear that ownership "expense amounts specified" under the Local Standards cannot be equated with actual out-of-pocket expenses.

II.

A. The Ninth Circuit, in *Ransom v. MBNA Am. Bank*, 577 F.3d 1026 (9th Cir. 2006), takes the position that the methods of the Internal Revenue Manual can be applied to determine the availability of the vehicle ownership expense deduction. In the IRS financial analysis, there generally has to be a loan or lease payment for a taxpayer to qualify for the ownership cost deduction. And under IRS collection standards, if a taxpayer has a car but no car payments, only the operating costs portion of the transportation standard is used to calculate the allowable transportation expense.

There are several problems associated with incorporating a large body of procedures, those of the Internal Revenue Service, into the means test of the Bankruptcy Code. One difficulty is that the statute does not incorporate the Internal Revenue Manual or Financial Analysis handbook, or even refer to them. Before importing IRS analysis into bankruptcy proceedings, Congress could reasonably be required to state unequivocally that it is doing so. Moreover, a draft version of the means test under the 1998 bankruptcy reform act stated explicitly that the expense allowances under the National Standards, Local Standards, and Other Necessary Expenses would be determined under the Internal Revenue financial analysis. That language incorporating Internal Revenue Manual analysis is absent from the 2005 version of the means test, and its absence weakens the argument that IRS financial analysis should be used.

B. The *Ransom* court views the adjective "applicable" as the key term in understanding how the debtor's monthly expenses are the "debtor's applicable monthly expense amounts specified under the . . . Local Standards." § 707(b)(2)(A)(ii)(I). In its analysis, the deduction of monthly expenses becomes appropriate or applicable to the debtor when the debtor actually has such expenses. Hence, the vehicle ownership expense allowance is simply inapplicable to the debtor if he makes no loan or lease payments on the vehicle. The court reasons that the term "applicable" would become meaningless if the debtor could deduct expenses he does not actually have.

An alternative meaning of "applicable" would be more to the point: an applicable expense amount is the one set down for a category, such as vehicle ownership expense, according to geographic region and number of cars. For a specific geographic region, the West, and ownership of one car, the Local Standards in 2006 specified that Ransom would be entitled to a $471 vehicle ownership expense allowance. For a different geographic region or metropolitan area, and ownership of two or more cars, a different vehicle ownership allowance would be listed in the Local Standards depending on the relevant census information.

The Ninth Circuit opinion argues that no expense amount under the Local Standards is "applicable" to the debtor as a vehicle ownership expense unless the debtor is actually making lease or loan payments. Otherwise, the debtor would be asserting a deduction for an expense he doesn't have, and the claimed expense would be applicable to nothing at all. A basic flaw in this argument is that § 707(b)(2)(A)(ii)(I) provides that "the monthly expenses of the debtor shall not include any payments for debts." Hence, the ownership expense allowance could not possibly be attributable to lease or loan payments, as the *Ransom* court insists: no monthly expenses are allowed to figure in this subclause of the means test. In fact, the "applicable monthly expense amounts specified under the . . . Local Standards" are standardized allowances based on census data, and these allowances apply to a debtor who owns a car regardless of whether the debtor is making car payments. There is nothing illogical about Congress's granting an exemption for the expenses intrinsic in vehicle ownership, such as depreciation, insurance, licensing fees, taxes, and replacement cost.

C. The Ninth Circuit is mistaken in believing that the BAPCPA goal of maximizing debt repayment requires denial of an ownership cost deduction in the absence of car payments. If a Chapter 13 debtor has even one car payment remaining at the time of filing, the debtor would be entitled under the Ninth Circuit analysis to deduct the amount of the car payment as an ownership expense, and repayment of unsecured debt would not be furthered. Allowing the vehicle ownership allowance under the Local Standards levels the playing field between cars which are owned outright and cars which are encumbered by secured debt. Restricting the ownership expense deduction to car payments is simply an incentive to debtors to retain large amounts of secured automobile debt, or else lose the ownership allowance.

In Ransom's case, denial of the vehicle ownership allowance deters repayment of unsecured debt. By refusing Ransom the ownership allowance, the Ninth Circuit inflates his disposable income to $681.55, even though his net monthly income as reflected on schedules I and J is only $504.15. He has been unable to have his bankruptcy plan confirmed. In this outcome, Ransom doesn't make enhanced payments to creditors, but rather is denied the opportunity to make any payments through a Chapter 13 plan.

D. Dicta in this Court's recent decision, *Hamilton v. Lanning,* 560 U.S. ___ (2010), discourage "senseless results" not intended by Congress in the computation of disposable income under § 1325(b)(2). These dicta are applicable to *Ransom* even though the issue here is allowing an owner expense deduction, not the difference between the forward-looking and mechanical approaches.

One such senseless result "would deny creditors payments that the debtor could easily make." *Hamilton v. Lanning, supra.* The other senseless result "would deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements." *Ibid.* The Ninth Circuit's decision has achieved both these undesirable outcomes. Jason Ransom is being denied the protection of Chapter 13 even though he is a debtor who meets the chapter's main eligibility requirements. Ransom is an individual whose income is sufficiently stable and regular to make payments under a plan, and his debts fall below the applicable limits. Under

§ 1325(a)(6), a plan cannot be confirmed unless the debtor will be able to make all the payments under the plan. However, if Ransom is denied a vehicle ownership deduction for his car, creditors will be denied payments which he could easily make. The reason for this dilemma is straightforward. On Form B22C, Ransom calculated disposable income of $210.55, based in part on a $471.00 deduction for the ownership expense. However, if Ransom is denied his vehicle ownership deduction, his disposable income would increase to $681.55 – he would be required to make payments in this amount, or his plan could not be confirmed. But we know that Ransom's net monthly income, as shown on Schedules I and J, is $504.15. As long as Ransom's vehicle ownership deduction is rejected, his disposable income is inflated to a figure which he cannot possibly pay on a monthly basis. The upshot is that Ransom would be unable to get a plan confirmed. Instead of paying more money to creditors, he would end up paying nothing in bankruptcy on his debts.

The Ninth Circuit decision yields the "senseless results" which this Court warned against. Creditors have been denied payments that the debtor could easily make. And Ransom, who meets the main Chapter 13 eligibility requirements, ends up being denied bankruptcy protection. These mistaken outcomes can be avoided by allowing Ransom an ownership cost deduction for his vehicle even though he makes no payments on the vehicle.

◆

ARGUMENT

I. THE VEHICLE OWNERSHIP DEDUCTION, FOR THE PURPOSE OF CALCULATING PROJECTED DISPOSABLE INCOME, IS ALLOWED EVEN IF THE DEBTOR MAKES NO LOAN OR LEASE PAYMENTS

A. The Courts Of Appeals For The Fifth, Seventh And Eighth Circuits Have Held That A Debtor Should Be Allowed An Ownership Cost Deduction For Vehicles Even If The Debtor Makes No Payments On The Vehicles

The debtor's right to an ownership cost deduction under the means test for vehicles, even where the debtor makes no payments on the vehicles, has been upheld in *Tate v. Bolen,* 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary,* 549 F.3d 1148 (7th Cir. 2008); and *eCast Settlement Corporation v. Washburn,* 579 F.3d 934 (8th Cir. 2009). *Tate* and *Ross-Tousey* are cases arising under Chapter 7 of the Bankruptcy Code. *Washburn* is a case under Chapter 13 of the Bankruptcy Code.

The means test, § 707(b)(2), pertains to both Chapter 7 and Chapter 13 proceedings. Indeed, the means test is found in Chapter 7 of the Code, and applies in Chapter 13 by reference to § 1325(b)(3) for debtors with above-median income.

The Eighth Circuit notes that there is little temptation in Chapter 7 to incorporate the methods of the Internal Revenue Manual into the means test:

> [I]n Chapter Seven, the means test is for determining whether a bankruptcy petition is presumptively abusive. Even where a petition is not presumptively abusive, a court may still find a Chapter Seven petition abusive for reasons of "bad faith or based on the totality of the circumstances." Accordingly, in the context of Chapter Seven, it is unnecessary to incorporate the IRM into the means test to honor the Congressional intent of limiting the courts' ability to allow expenses and making it more difficult to discharge consumer debt. Rather, the catch-all provisions of Chapter Seven provide a backstop that permits the dismissal of abusive Chapter Seven petitions (citation omitted).

Washburn, 579 F.3d at 940. Chapter 7 has several provisions for dismissing abusive cases, and it is unnecessary to incorporate Internal Revenue Manual ("IRM") methods into the means test.

Chapter 13 is more susceptible to being influenced by BAPCPA's legislative mandate to make funds available to creditors, yet the Eighth Circuit concludes that § 707(b)(2)(A)(ii)(I) must be interpreted uniformly in Chapter 7 and Chapter 13 cases:

> Our case, however, arises under Chapter Thirteen rather than Chapter Seven, and the same issues of presumptive abuse or non-presumptive abuse are not directly in play. Still, the question before us today is how to properly interpret a provision of Chapter Seven, and we do not believe it is appropriate to give § 707(b)(2)(A)(ii)(I) one meaning when applied in a Chapter Seven proceeding and another when applied in a Chapter Thirteen proceeding without a legislative basis for doing so. Accordingly, even though the argument based on BAPCPA's intent to make more funds available to creditors is more compelling in the present case than in Chapter Seven cases such as *Ross-Tousey* or *Tate,* we find the Seventh and Fifth Circuits' balancing of competing legislative intentions convincing. Accordingly, we hold that a debtor need not in fact owe a vehicle loan or lease payment to claim a vehicle-ownership expense in accordance with § 707(b)(2)(A)(ii)(I).

Id. The calculation of vehicle ownership expense under the means test will yield the same result in Chapter 7 and Chapter 13 cases.

Following the Fifth and Seventh Circuits, the Eighth Circuit declines to use the IRM method in determining the vehicle ownership deduction. Under the IRM approach, a vehicle ownership deduction is only permitted on condition of a monthly debt payment. However, this requirement cannot be reconciled with the portion of § 707(b)(2)(A)(ii)(I) that provides, "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." *Id.* at 938. Since Congress did not condition "monthly expense amounts" on the existence of a corresponding debt, it is appropriate to treat these expense amounts "in a categorical fashion based on a debtor's geographic location and number of vehicles rather than making such expense amounts available only on condition of a vehicle-related debt" (citation omitted)." *Id.*

The Eighth Circuit notes that the IRS itself disavows any intent to have the financial standards from the IRM apply in any context other than tax collection and specifically disclaims any intent to have the IRM apply in the context of bankruptcy expense calculations:

> Disclaimer: IRS Collection Financial Standards are intended for use in calculating repayment of delinquent taxes. These Standards are effective on March 1, 2008 for purposes of federal tax administration only. Expense information for use in bankruptcy calculations can be found on the website of the U.S. Trustee Program.

Id. at 938-39 (citation omitted) (quoting http://www.irs.gov/individuals/article/0,,id=96543.00.html). The intent of the administrative body that formulated the IRM, as well as legislative intent, support a refusal to incorporate the IRM into the means test for determination of disposable income. *Id.* at 939.

1. The *Washburn* Decision Took a Forward-Looking Approach to Projected Disposable Income and Allowed the Ownership Deduction in the Absence of Car Payments

In *Washburn,* the debtor had above-median income. His Chapter 13 plan included payment of his "projected disposable income" under § 1325(b)(1)(B) to his unsecured creditors for an "applicable commitment period" of sixty months. The debtor's "disposable income" was determined by applying the "means test" of Chapter 7. Under § 1325(b)(2)-(3), disposable income was defined as current monthly income less amounts reasonably necessary to be expended under § 707(b)(2)(A) and (B).

The debtor owned his car outright, but excluded from income $471 a month as a vehicle ownership expense. The trustee and an unsecured creditor objected to vehicle ownership allowance, but the debtor's claim to the allowance was upheld by the bankruptcy court, and subsequently by the Eighth Circuit.

The *Washburn* court followed its previous decision in *In re Frederickson,* 545 F.3d 656 (8th Cir. 2008), cert. denied, 129 S.Ct. 1630 (2009). *Frederickson* recognized a distinction between disposable income and projected disposable income; the latter was found to be a forward-looking term rather than a mechanically derived and strictly defined term like disposable income. The court recognized some discretion in looking beyond disposable income in determining projected disposable income:

> [A] distinction can be drawn between a debtor's "disposable income," which is calculated solely on the basis of historical numbers and regional averages, and a debtor's "projected disposable income," which necessarily contemplates a forward-looking number. Under this interpretation, bankruptcy courts will continue to have some discretion over the calculations of each individual debtor's financial situation, with the result that the debtor's "projected disposable income" will end up more closely aligning with reality.

Frederickson, 545 F.3d at 659. The *Washburn* court declined to engage in speculation about projected disposable income without evidence of reasonably certain future events that would change the debtor's financial situation. Disposable income is presumptively the debtor's projected disposable income, unless the presumption is rebutted by a sufficiently certain basis for departing from the disposable income definition. The *Washburn* court held that no such evidence had been presented. *Washburn*, 579 F.3d at 941-42.

The Eighth Circuit's formulation of the forward-looking approach and the vehicle expense deduction is as follows:

> [D]etermination of a vehicle-ownership expense for the purpose of determining

> disposable income is categorical under § 707(b)(2)(A)(ii)(I), but "some discretion" exists for bankruptcy courts to consider the debtor's actual financial situation in determining projected disposable income for the purpose of § 1325(b)(1)(B).

Id. at 942. Unless a substantial change in circumstances is reasonably certain, projected disposable income will not differ from disposable income and the vehicle ownership deduction, regardless of whether the debtor makes loan or lease payments on the vehicle.

B. The Means Test Specifies Standard Expense Allowances For Vehicle Ownership Costs

1. The language of § 707(b)(2) distinguishes between standard expense allowances and computation of actual monthly expenses. Where a standard expense allowance is indicated, the debtor is allowed to deduct from income a fixed amount specified in the National and Local Standards set forth by the Internal Revenue Service. Where an actual expense is required, the debtor is allowed only a deduction based on a computation of out-of-pocket expenditures.

The language of § 1325(b)(2), which provides for application of the means test, allows for use of standard expense allowances as well as tabulation of actual expenses. In pertinent part, it states:

> For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended –
>
> (A)(i) for the maintenance or support of the debtor . . .

The phrase "amounts reasonably necessary to be expended" cannot be reduced to "amounts actually expended, but not in an amount more than reasonably necessary." The latter phrasing would limit the deduction from income to actual out-of-pocket expenses. By contrast, the term "amounts reasonably necessary to be expended" lends itself to standard amounts which are promulgated as being reasonable, as well as to computation of expenses incurred.

The "amounts reasonably necessary to be expended" are determined in accordance with the means test of § 707(b)(2)(A).

§ 707(b)(2)(A)(ii)(I) covers deduction of a variety of consumer expenses, including transportation costs:

> The debtor's monthly expenses shall be the debtor's applicable monthly **expense amounts specified** under the National Standards and Local Standards, and the debtor's **actual monthly expenses** for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides . . . (emphasis added).

The "expense amounts specified" under the IRS National Standards and Local Standards refer most logically to the amounts set forth as the pertinent standards. These "specified" amounts are contrasted with "actual monthly expenses" for the IRS list of Other Necessary Expenses.

If § 707(b)(2)(A)(ii)(I) referred only to actual monthly expenses, there would be no sense in the differentiation between "monthly expense amounts specified" under the National Standards and Local Standards, and "actual monthly expenses" pertaining to Other Necessary Expenses.

Use of the verb "specified" in § 707(b)(2)(A)(ii)(I) indicates reference to a list of delineated amounts. "Specify" is defined as:

> 1. to mention, describe, or define in detail; state definitely. 2. to include as an item in a set of specifications. 3. to state explicitly as a condition.

Webster's New World Dictionary of the American Language: College Edition (1958).

Ransom's argument is supported by the ordinary meaning of the word "specified." "When terms used in a statute are undefined, we give them their ordinary meaning." *Hamilton v. Lanning,* 560 U.S. ___ (2010), citing *Asgrow Seed v. Winterboer*, 513 U.S. 179, 187 (1995). Amounts "specified" are, by definition, amounts listed and settled, and available for reference. They are items in a set of specifications. If the amounts set forth in the tables of the National Standards and Local Standards were merely jumping-off places for a calculation of the appropriate amounts, the drafters of the means test would have so stated. For example, the monthly expenses could have been defined as "the debtor's applicable monthly expenses, not to exceed the amounts specified under the National Standards and Local Standards."

Ransom's position is also supported by a rule of statutory construction: "[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law" (internal quotation marks omitted), *Hamilton v. Lanning, supra,* citing *Kawaauhau v. Geiger,* 523 U.S. 57, 62 (1998). Section 707(b)(2)(A)(ii)(I) contains the express prohibition, "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." In stark contrast, the IRS Financial Analysis Handbook states, at Section 5.15.1.7, that

> If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense.

J.A. 84.

According to the IRS financial analysis, the ownership cost deduction is allowable only for car payments. In this view, the transportation expense under the Local Standards will include no deduction for ownership expense if a debtor owns his vehicle free and clear. But if the transportation ownership deduction is measured by lease and loan payments, then the deduction renders meaningless the exclusion of debt payments from the monthly expenses of the debtor. All the clauses of the statutory provision can only retain their meaning if the vehicle ownership deduction is an allowance not governed by car payments.

On May 24, 2006, the Advisory Committee on Bankruptcy Rules of the Judicial Council of the United States issued its Report on the proposed Bankruptcy Rules and the Official Forms to be used by debtors in accord with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA" or the "Act"). App. 9-15.

The initial step in determining what disposable income, if any, a debtor must devote to the repayment of unsecured creditors is the "means test" which sets forth deductions from current monthly income ("CMI"). As the Advisory Committee explains:

> The means test operates by deducting from CMI defined allowances for living expenses and payment of secured and priority debt, leaving disposable income presumptively available to pay unsecured non-priority debt. These deductions from CMI are set out in the

> Code at § 707(b)(2)(A)(ii)-(iv). The forms for Chapter 7 and Chapter 13 have identical provisions . . . for calculating these deductions.

App. 19.

The Report of the Advisory Committee specifies how deductions are to be ascertained under the means test, and in particular, how these deductions are to entered on the forms which implement the means test:

> Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the website of the U.S. Trustee Program, where the relevant IRS allowances are to be found.

App. 19.

The procedure for finding the correct allowance under the National Standards and Local Standards is straightforward. On the line for the "specified expense deductions," the debtor locates the proper IRS allowance on the website of the U.S. Trustee

Program and enters it on the form as the allowed deduction.

The Report of the Advisory Committee explains that the IRS National Standards set forth single allowances nationwide depending on income and household size:

> The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain an entry line for the applicable allowance.

App. 20.

The Advisory Committee on Bankruptcy Rules also takes the position that IRS Local Standards for transportation, which include the automobile deductions presented for review in the instant case, should be treated as allowed deductions rather than merely a cap on expenses as they would be on IRS audit:

> The IRS Local Standards provide one set of deductions for housing and utilities and another set for transportation expenses, with different amounts for different areas of the country, depending on the size of the debtor's family and the number of the debtor's vehicles. Each amount specified in the Local Standards is treated by the IRS as a cap on actual expenses, but **because § 707(b)(2)(A)(ii) provides for deductions in the "amounts specified under the . . . Local Standards," the forms treat these**

> **amounts as allowed deductions.** The forms again direct debtors to the website of the U.S. Trustee Program to obtain the appropriate allowances (emphasis added).

App. 20.

Form 22, as completed for Jason Ransom in this case, and for any above-the-median debtor in any Chapter 7 or Chapter 13 case, contemplates that the amounts listed as the IRS Local Standards for transportation be treated as "allowed deductions." By contrast, the IRS itself, in conducting its audits, would treat the Local Standards as a cap on actual expenses.

The Advisory Committee on Bankruptcy Rules delineates an essential distinction between the use of the IRS Local Standards on transportation for the internal procedures of the IRS, and the use of those same Standards for implementation of BAPCPA. The IRS devised its Standards to limit the deductions claimed by taxpayers; the IRS-implemented Standards are maximum deductions, and where the actual expense is less, the IRS deduction will be reduced accordingly. However, for purposes of the Bankruptcy Code, the IRS Standards are "appropriate allowances." These allowances are not reduced if the actual expenses are less. The bankruptcy-implemented transportation Standards are both cap and floor of vehicle-related expenses.

The Advisory Committee distinguishes between the transportation allowance and the ownership/lease expense:

> The IRS issues Local Standards for transportation in two components for its internal purposes as well as for bankruptcy: one component covers vehicle operation/public transportation expense and the other ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates, with debtors who do not operate vehicles being given a public transportation allowance. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance.

App. 21.

The vehicle operation/public transportation expense is an allowance which has nothing to do with debt payments. The only factors for the transportation expense are the number of vehicles operated by the debtor, and a public transportation allowance. Therefore it would make no sense to say that the transportation allowance cannot be greater than vehicle loan or lease payments, since "no debt payment is involved in this allowance."

There is also an IRS Local Standard for ownership/lease expense, and computation of this expense may include a reduction for debt payments, so that there is no double counting with respect to the allowed deductions on secured debt. The Report of the Advisory Committee explains:

> The ownership/lease component, on the other hand, may involve debt payment. Accordingly, **the forms require debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount** (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the forms for deductions of secured debt (emphasis added).

App. 21-22.

The bifurcation of the IRS Local Standards for transportation into two components – vehicle operation as opposed to ownership/lease expense. A debtor may receive a vehicle operation deduction based on the number of vehicles operated, regardless of whether there are any debt payments associated with the vehicles. The ownership/lease expense is an allowance that does not necessarily include a debt portion: a debtor will automatically receive the ownership deduction provided he owns one or more vehicles. However, the ownership/lease expense deduction must be reduced by the amount of any allowed secured payments which are deducted under § 707(b)(2)(A)(iii), otherwise the debtor would receive a double deduction for ownership expenses.

The means test of Form 22 incorporates, from its inception, the position that the transportation' expenses of the IRS Local Standards, as applied to the determination of disposable income in bankruptcy, are "appropriate allowances," not caps. Form 22, as drafted, does not allow for the transportation allowance for vehicles to be reduced if actual expenses are less. On Form 22, the transportation allowance is set once it has been determined under the IRS Local Standards for the area of the country, the size of debtor's family and the number of debtor's vehicles. The only adjustment is a reduction of the ownership/lease expense to eliminate double-counting for any secured debt expenses which are deducted.

Ransom, in claiming a vehicle deduction on Form 22, acted as dictated by Federal Rule of Bankruptcy Procedure 1007(b)(6):

> A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the debtor has current monthly income greater than the median family income for the applicable state and family size, a calculation of disposable income in accordance with § 1325(b)(3), **prepared as prescribed by the appropriate Official Form** (emphasis added).

Federal Rule of Bankruptcy Procedure 1007(b)(6) gives the debtor no discretion. The debtor must prepare the calculation of disposable income "as prescribed by the appropriate Official Form." As indicated by the Report of the Advisory Committee on Bankruptcy Rules, and by the text of Form 22 approved by the Judicial Conference, the debtor followed the Rules of Bankruptcy Procedure in completing the calculation of disposable income as he did.

Jason Ransom completed Form 22 precisely as the form instructed, and entered a deduction for vehicle operation and vehicle ownership precisely in conformity to the instructions provided with Form 22.

If appellee's objection to confirmation of Ransom's Chapter 13 plan were to be sustained, not only this debtor's Chapter 13 plan would be affected: Form 22 would have to be revised to accord with a new interpretation of how vehicle ownership deductions are computed under the means test. However, no such revision is necessary or appropriate. Petitioner's Chapter 13 plan faithfully implements the terms of Official Form 22, which in turn accurately reflects the provisions of §§ 1325 (b)(2) and (b)(3) and 707(b)(2)(A)(ii)(I).

2. The monthly expenses used for motor vehicle deductions are set forth in § 707(b)(2)(A)(ii)(I), since motor vehicle expenses for purposes of the means test are those specified in the National Standards and Local Standards.

The language relating to vehicle expenses can be clarified by comparison with the other subclauses, (II) through (V), of subparagraph (A)(ii). Considered together, subclauses (I) through (V) display a consistent differentiation between "monthly expense amounts specified" and "actual monthly expenses."

§ 707(b)(2)(A)(ii)(II) sets forth, in pertinent part, monthly expenses regarding the elderly, ill and disabled:

> In addition, the debtor's monthly expenses may include, if applicable, the continuation of **actual expenses** paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family . . . (emphasis added).

The debtor's expenses for the elderly, ill or disabled must be "actual expenses." This category of expenses that must be "actual," that is, calculated on the basis of enumerated expenditures, is different from the "expense amounts specified" under the National Standards and Local Standards.

Debtor's monthly expenses also include administrative expenses of the chapter 13 plan, as set forth in pertinent part in § 707(b)(2)(A)(ii)(III):

> In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the **actual administrative expenses** of administering a chapter 13 plan for the district in which the debtor resides . . . (emphasis added).

Subclause (III) takes care to specify that "actual" administrative expenses are the predicate for this expense deduction.

The deduction of educational expenses for minor children is limited to actual expenses, up to a fixed allowable amount per child. § 707(b)(2)(A)(ii)(IV) provides in pertinent part:

> In addition, the debtor's monthly expenses may include the **actual expenses** for each dependent child less than 18 years of age, not to exceed $1,650 per year per child, to attend a private or public elementary or secondary school . . . (emphasis added).

Subclause (IV) makes clear that only the actual expenses for education for minor children can be deducted. The dollar amount allowed per child per year is a cap on allowable expenses, not a standard amount which can automatically be applied.

§ 707(b)(2)(A)(ii)(V) provides for the deduction of additional expenses for housing and utilities. The language of subclause (V) is helpful because it differentiates between a deduction of expenses which are calculated specifically ("actual expenses") and expenses which are mandated by an official schedule ("the allowance specified"). Subclause (V) states as follows:

> In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the **allowance specified by the Local Standards** for

> housing and utilities issued by the Internal Revenue Service, based on the **actual expenses** for home energy costs if the debtor provides documentation of such **actual expenses** and demonstrates that such **actual expenses** are reasonable and necessary (emphasis added).

Subclause (V) provides an additional allowance for home energy costs where the demonstrated, documented "actual expenses" for such costs exceed the "allowance specified by the Local Standards." Subclause (V) would have no meaning if an "allowance specified" under IRS standards were no different than "actual expenses" tabulated by the debtor.

Subclause (V) for home energy costs, like subclause (I) for vehicle expense deductions and other categories, makes clear that an expense amount "specified" under the IRS standards is not to be equated with "actual expenses." The "allowance specified" [subclause (V)] and the "monthly expense amounts specified" [subclause (I)] refer to set amounts specified by the IRS in standardized tables. These "specified" amounts limit the deductions that can be claimed by debtors under the means test, unless a specific exception is provided for a deduction in excess of these specified amounts. By contrast, "actual monthly expenses" in subclauses (I) through (V) represent calculations of amounts expended rather than fixed sums listed in the IRS standards.

C. The Plain Language Interpretation Of The Means Test Has Widely Held That A Vehicle Ownership Allowance Is Permitted Even When The Debtor Makes No Car Payments

The language of § 707(b)(2)(A)(ii)(I) is clear. It provides that the debtor's monthly expenses "**shall be** the debtor's applicable monthly expense **amounts specified** under the National Standards and Local Standards . . . issued by the Internal Revenue Service[.] (emphasis added)." The statutory language of § 707(b)(2)(A)(ii)(I) allows no discretion. *See, In re Phillips,* 382 B.R. 153 (Bankr. D. Mass. 2008). By stating that the debtor "shall" use as his or her expenses the "amounts specified under the national Standards and Local Standards," Congress created a fixed allowance for debtors in the amounts specified, not merely a cap of the debtor's actual expenses. *See,* Eugene R. Wedoff, *Means Testing in the New 707(b),* 79 Am. Bankr. L.J. 231, 257-58 (2005) ("the statute makes no provision for reducing the specified amounts to the debtor's actual expenses – a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less"). *See also,* 6 *Collier on Bankruptcy* ¶ 707.05(2)(c)(i) (A. Resnick and H. Sommer, eds., 15th ed. Rev. 2005) ("The better view is that, because the language refers to deducting the 'amount specified' in the standards, and not actual expenses, the ownership allowance specified in the standards is the minimum amount to be deducted").

Congress drew a distinction in the statute between "applicable" expenses on one hand and "actual" expenses on the other. As the Seventh Circuit Court of Appeals states in *Ross-Tousey v. Neary,* 549 F.3d 1148, 1157 (7th Cir. 2008), "In order to give effect to all the words of the statute, the term 'applicable monthly expense amounts' cannot mean the same thing as 'actual monthly expenses.'"

The bankruptcy court in *In re Farrar-Johnson,* 353 B.R. 224 (Bankr. N.D.Ill. 2006) drew an analogous distinction between "applicable" and "actual" expenses in interpreting § 707(b)(2)(A)(ii)(I). There, the debtors claim a monthly housing expense, even though the debtors were provided housing on a military base. The court reasoned that, "By reference to section 707(b)(2)(A), section 1325(b)(3) also lets an above-median debtor claim a housing expense on Form B22C even if he has no housing expense." *Id.* at 227. The court held that the debtors could properly claim a housing expense as the "reasonably necessary" amount on Form B22C, and denied the trustee's motion to dismiss.

The *Farrar-Johnson* court clarified that an "applicable" expense can be claimed on Form B22C even if no "actual" expense was incurred:

> The debtors were entitled to claim that expense whether they had it or not. Section

> 707(b)(2)(A)(ii)(I) permits a debtor to claim "the applicable monthly expense amount" under the Local Standards. Read in isolation, "applicable" is ambiguous, meaning simply: "That can be applied; appropriate." *American Heritage Dictionary* 89 (3rd ed. 1996); *see also Webster's Third New Int'l Dictionary* 105 (1981) (defining "applicable" as "capable of being applied: having relevance"). An expense could be "appropriate" for a debtor to claim because he actually incurs that expense. It could also be "appropriate" to claim because he lives in a certain state and county and has a household of a certain size, putting him in the right box on the Local Standards chart

Id. at 230. The court pointed out that "applicable" expenses refer to a standard published by the government, and do not entail an analysis of "appropriate" expense or "actual" expense:

> Statutory terms . . . are never read in isolation; they are read in the context in which they appear (citation omitted). Section 707(b)(2)(A)(ii)(I) defines monthly expenses not only as a debtor's *"applicable* monthly expense amounts" under the "National and Local Standards" but also as the debtor's *"actual* monthly expenses" for the categories the IRS specifies as "Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). Congress drew a distinction in the statute between "applicable" expenses on the one hand and "actual" expenses on the other. "Other Necessary

> Expenses" must be the debtor's "actual" expenses. Expenses under the "Local Standards," in contrast, need only be those "applicable" to the debtor – because of where he lives and how large his household is. It makes no difference whether he "actually" has them. *See* Wedoff, *supra,* at 256 (noting that "a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less").

Id. at 230-31.

In *Ross-Tousey,* the Court of Appeals for the Seventh Circuit distinguished between cases adopting the Internal Revenue Service Manual as the standard for reading the statute, such as *Ransom,* 380 B.R. at 808, and those holding that a debtor who owns his car outright may take the deduction, such as *Kimbro, supra,* 389 B.R. at 532. The Seventh Circuit found that courts allowing the deduction were adhering strictly to the statutory language, which calls for defining applicable expenses as those set forth in the IRS Local Standards:

> [C]ourts in the plain language camp argue that "applicable" refers to the selection of an expense amount corresponding to the appropriate geographic region and number of vehicles owned by the debtor. *See, e.g., In re Grunert,* 353 B.R. 591, 592 (Bankr. E.D. Wis. 2007); *In re McIvor,* No. 06-42566, 2006 Bankr. LEXIS 3861, 2006 WL 3949172, *4 (Bankr. E.D. Mich. Nov. 15,

> 2006) ("the word 'applicable,' in the context of 707(b)(2)(A)(ii)(I) means the applicable Local Standards as it pertains to the area in which the debtor resides"); *In re Smith*, No. 06-30261, 2007 Bankr. LEXIS 2173, 2007 WL 1836874, *8 (Bankr. N.D. Ohio June 22, 2007) ("If the debtor has only one car, the 'applicable' expense is the one found in the first column [of the Standard for Ownership Costs], and if a debtor has a second vehicle, the amount in the second column is also 'applicable.'"). In other words, under the plain language approach, the Local Standard vehicle ownership deduction "applies" to the debtor by virtue of his geographic region and number of cars, regardless of whether that deduction is an actual expense.

Ross-Tousey, 549 F.3d at 1157-58. The Seventh Circuit sided with the courts interpreting "applicable" expenses in § 707(b)(2)(A)(ii)(I) according to the plain language of the statute:

> We are persuaded that the plain language view of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute. In order to give effect to all the words of the statute, the term "applicable monthly expense amounts" cannot mean the same thing as "actual monthly expenses." Under the statute, a debtor's "actual monthly expenses" are only relevant with regard to the IRS's "Other Necessary Expenses;" they are not relevant to deductions taken under the Local Standards, including the transportation ownership deduction.

> Since "applicable" cannot be synonymous with "actual," applicable cannot reference what the debtor's actual expense is for a category, as courts favoring the IRM [Internal Revenue Manual] approach would interpret the word. We conclude that the better interpretation of "applicable" is that it references the selection of the debtor's geographic region and number of cars.

Id. at 1158.

It can also be argued that "applicable monthly expense amounts" cannot refer to car loan and lease payments, because the section of the means test dealing with vehicle ownership costs expressly excludes payments for debts:

> [T]he Financial Analysis Handbook provides that Ownership Costs are "nationwide figures for loan or lease payments." Financial Analysis Handbook, § 5.15.1.7. Section 707(b)(2)(A)(ii)(I), however, directs that "the monthly expenses of the debtor shall not include any payments for debts." Given that Congress did not intend for the debtor's "applicable monthly expense amounts specified under the . . . Local Standards" to include an automobile loan payment, the term "applicable" cannot be interpreted to mean that the debtor must have an automobile loan payment to take the deduction. Instead, the only logical interpretation of the term "applicable" is that it refers to the amount "applicable" to the debtor from among the various expense amounts

> provided in the tables that make up the Standards.

Clippard v. Ragle (In re Ragle), 395 B.R. 387, 401 (D. E.D.Ky. 2008).

Since 11 U.S.C. § 707(b)(2)(A)(ii)(I) expressly excludes payments for debts from that subclause, "applicable monthly expense amounts" cannot refer to loan and lease payments, as the *Ransom* court would contend. Rather, "applicable" must mean the amounts set forth in the tables of the Local Standards.

Put another way, in *Ransom* the Ninth Circuit has chosen *not* to make the plain language of the statute the determining factor in its interpretation.

II. THE NINTH CIRCUIT ERRS IN DENYING A VEHICLE OWNERSHIP DEDUCTION IN THE ABSENCE OF CAR PAYMENTS

A. The Ninth Circuit Is Mistaken In Importing The Financial Analysis Methodology Of The Internal Revenue Manual Into The Bankruptcy Code

Congress did not incorporate the language of the Internal Revenue Manual ("Manual" or "IRM") into § 707(b)(2)(A)(ii)(I), although it could easily have done so if it sought to incorporate IRS collection methodology into the interpretation of the means test.

Nonetheless, the *Ransom* court adopts the "IRM approach," which relies on the IRS's interpretation of which transportation expenses are deductible:

> The IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, provide: "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense." *See* Collection Financial Standards (March 1, 2009) (footnote omitted). The IRM similarly requires a taxpayer to have a loan or lease payment to qualify for the ownership cost deduction. *See* Internal Revenue Service Manual, Financial Analysis Handbook, Pt. 5, ch. 15, § 5.15.1.9 (I.B) (May 29, 2008) (footnote omitted).

Ransom, 577 F.3d at 1030. The Ninth Circuit follows the IRM approach because of a belief that the IRS collection methodology best implements Congress's intent:

> This approach also is arguably supported by Congress's intent in implementing the means testing as part of BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] – "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. 109-31(I), at 1, *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

Id.

As the Court of Appeals for the Seventh Circuit pointed out in *Ross-Tousey,* the language of § 707(b)(2)(A)(ii)(I) contains no reference to using an IRS method for determining whether deductions are allowable:

> [W]hile the IRM provides a useful methodology to IRS agents for determining a taxpayer's ability to pay the IRS, we agree with other plain language courts that there is no indication that Congress intended that methodology to be used in conducting the means test. As an initial matter, section 707(b)(2)(A)(ii)(I) makes reference only to the "amounts specified" in the Local Standards; the statute does not incorporate the IRM or the Financial Analysis Handbook, or even refer to them. *See* § 707(b)(2)(A)(ii)(I) (making no reference to the IRM, the Financial Analysis Handbook or their methodologies).

Ross-Tousey, 549 F.3d at 1159.

The *Ross-Tousey* court found no support for the contention, in *Ransom,* that using the IRM approach is called for by Congressional intent. As the Seventh Circuit Court of Appeals put it:

> The legislative history of section 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology was deliberate . . . A prior version of the BAPCPA which was never passed defined "projected monthly net

> income" under the means test to require a calculation of expenses as follows:
>
> > (A) the expense allowances under the applicable National Standards, Local Standards, and Other Necessary Expenses allowance (excluding payments for debts) for the debtor . . . in the area in which the debtor resides *as determined under the Internal Revenue Service financial analysis* for expenses in effect as of the date of the order for relief.
>
> H.R. 3150, 105th Congress (1998) (emphasis added). The phrase "as determined under the Internal Revenue Service financial analysis" was later removed and replaced by the current language, which states that the debtor should deduct the "applicable monthly expense amounts specified under the National and Local Standards (citations omitted). Because the statute incorporates only the "amounts" of the Local Standards and does not incorporate IRM procedures or methodology, and because the legislative history of the statute indicates that Congress intentionally omitted any reference to IRM financial analysis, we believe that using the IRM methodology in conducting the means test is misguided (citations omitted).

Id. at 1159-60. An early version of the means test, in the 1998 bankruptcy reform legislation which was not enacted, specified that the IRS financial analysis would be used in determining deductions under the

National Standards and Local Standards. However, the means test passed into law by the 2005 law omits any reference to using the Internal Revenue Manual criteria to cap the amounts allowed under the Local Standards. The language of the means test incorporates the amounts set forth in the Local Standards, not the IRM financial analysis which the IRS would use in a tax audit.

The Seventh Circuit argues that the legislative history of § 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology is deliberate. The court uses the prior version of the bill to interpret the bill that was subsequently enacted, citing *In re Lifschultz Fast Freight Corp.*, 63 F.3d 621, 631 (7th Cir. 1995) for the conclusion that when the final enacted version of a bill omits a provision contained in earlier unpassed versions, the omission evidences a "significant and clearly deliberate" choice by Congress. *Ross-Tousey,* 549 F.3d at 1159.

B. The Ninth Circuit Is Mistaken In Asserting That Any Deduction For Vehicle Ownership Costs Is "Fictitious" In The Absence Of Car Payments

The Ninth Circuit attaches particular importance to the term "applicable" in the definition of the debtor's monthly expenses as the debtor's "applicable monthly expense amounts specified under the . . . Local Standards." § 707(b)(2)(A)(ii)(I). In the court's view, the term "applicable" loses all meaning if applied to an ownership expense deduction in the absence of car payments:

> As set forth in the statute, the adjective "applicable" modifies the meaning of the noun "monthly expense amounts;" it indicates that the deduction of the monthly expense amount specified under the Local Standards for the expense becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense.
>
> The ordinary, common meaning of "applicable" further impels us to this conclusion. "Applicable," in its ordinary sense, means "capable of or suitable for being applied." Merriam-Webster's Collegiate Dictionary 60 (11th ed. 2005). Given the ordinary sense of the term "applicable," how is the vehicle ownership expense allowance *capable of being applied* to the debtor if he does not make any lease or loan payments on the vehicle? In other words, how can the debtor assert a deduction for an expense he does not have? If we granted the debtor such an allowance, we would be reading "applicable" right out of the Bankruptcy Code.

Ransom, 577 F.3d. at 1031. The reasoning here is that an expense amount is only "applicable" if there is actually an expense. In the absence of lease or loan payments, the court argues, there can be no monthly vehicle ownership expense. In other words, no expense amount is applicable under the Local Standards where the debtor owns the vehicle outright; otherwise the term "applicable" becomes meaningless. The problem with this argument is that it assumes what it attempts to prove. The word "applicable" can easily be read to mean the appropriate geographic region and number of cars for a debtor. Once this pertinent expense amount is located, it can be entered as a deduction in the amount specified in the Local Standards.

In *Ransom,* the Court of the Appeals for the Ninth Circuit has dismissed as "ironic" and "fictitious" the concept of ownership expenses other than debt payments:

> An "ownership cost" is not an "expense" – either actual or applicable – if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor.

Ransom, 577 F.3d at 1030. As the Ninth Circuit Bankruptcy Appellate Panel put it, "we believe the statute can only be interpreted to 'apply' expense standards in cases where debtors in fact pay such expenses." *Ransom,* 380 B.R. at 808.

However, the *Ransom* court failed to acknowledge that there are vehicle ownership costs in addition to debt payments. As the Court of Appeals for the Seventh Circuit stated in *Ross-Tousey,* 549 F.3d at 1160, there are costs of vehicle ownership aside from loan payments: "These non-debt costs include depreciation, insurance, licensing fees and taxes." Replacement costs are another ownership expense, and the ownership cost deduction takes into account the expenses incurred by debtors to replace their vehicles. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

Granting the ownership cost deduction to a vehicle that is owned outright accords best with economic reality:

> [A] car for which the debtor no longer makes payments may soon need to be replaced (so that the debtor will actually have ownership expenses), and it avoids arbitrary distinctions between debtors who have only a few car payments left at the time of their bankruptcy filing and those who finished making their car payments just before the filing.

In re Fowler, 349 B.R. 414, 419 (Bankr. D.Del. 2006) (quoting Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 Am. Bankr. L. J. 231, 257-58 (2005).

In Ransom's case, the Ninth Circuit approach would grant him a full ownership cost deduction under the Local Standards even if he had only one payment remaining on his vehicle. But in fact Ransom owned his car outright, so he received no ownership deduction and his Chapter 13 Plan was denied confirmation. Such a result is arbitrary at best.

In the analysis in *Kimbro, supra,* the real ownership expenses are not debt payments or loan payments, but factors such as depreciation:

> In *Kimbro,* the Sixth Circuit BAP found that another policy reason for permitting the deduction for a debtor who owns a car free and clear of any debt was the fact that such a debtor still incurs expenses arising from the ownership of the vehicle. *Id.* at 522. In fact, the BAP found that debt payments and lease payments are not really "ownership expenses." *Id.* at 531. Instead, "the expenses related to vehicle ownership are the expenses for depreciation, insurance, licensing fees and taxes." *Id.* The BAP determined that "every vehicle owner incurs ownership expenses, and that is so regardless of debt or lease payments." *Id.* The court concluded that "[b]ecause the ownership of a vehicle always involves an expense, it was neither absurd nor irrational for Congress to allow a uniform deduction in the bankruptcy means test for an ownership expense even when there is no debt or lease payment." *Id.*

Clippard v. Ragle, 395 B.R. at 400.

For the *Ransom* court, the statutory language "does not allow a debtor to deduct an 'ownership cost' (as distinct from an 'operating cost') that the debtor does not have. *Ransom*, 577 F.3d at 1030. By contrast, the *Kimbro* line of analysis finds it "neither absurd nor irrational" for Congress to allow a deduction for ownership expenses such as depreciation, insurance, licensing fees and taxes. The *Kimbro* position is supported by the fact that 11 U.S.C. § 707(b)(2)(A)(ii)(I) expressly states, "the monthly expenses of the debtor shall not include any payments for debts." In light of this prohibition, it is incongruous to conclude that the vehicle ownership expenses under the Local Standards consist precisely of car payments.

C. The Ninth Circuit Is Wrong To Single Out The Ownership Cost Allowance As Thwarting BAPCPA's Goal Of Debt Repayment

The Ninth Circuit chooses to deny Ransom a vehicle ownership allowance to achieve "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom,* 577 F. 3d at 1031, citing the opinion of the Ninth Circuit Bankruptcy Appellate Panel, *Ransom,* 380 B.R. at 808. However, this strategy appears at best to be ineffectual. Debtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

The Ninth Circuit penalizes Ransom for owning his vehicle free and clear, and disregards the depreciation and replacement costs inherent in automobile ownership. Further, the Ninth Circuit holding ignores the fact that Ransom could have lowered his disposable income much further if he had large car payments. Under § 707(b)(2)(iii), a debtor is allowed to deduct from monthly income the average monthly payments on secured debt, including debt on motor vehicles, calculated as the sum of all such payments divided by 60. If Ransom's average monthly payments on secured motor vehicle debt were large enough, his disposable income under the means test could be reduced to zero. Surely Ransom's ownership cost allowance under the Local Standards does appear excessive compared to the virtually unlimited deduction he could have obtained if he were making loan or lease payments on his vehicle.

Means testing seeks to implement improved debt repayment. This goal is not served by disallowing the vehicle ownership cost allowance for vehicles which are owned free and clear. Such an outcome sends entirely the wrong message, namely, that it is advantageous to be deeply in debt on motor vehicle loans, rather than to pay them off. Under § 707(b)(2)(iii), a debtor is allowed to deduct from monthly income the average monthly payments on secured debt, including debt on motor vehicles, calculated as the sum of all such payments divided by 60. If Ransom's average monthly payments on secured motor vehicle debt were large enough, his disposable income under the means test could be reduced to zero. Granting Ransom a vehicle cost deduction levels the playing field between those who owe secured debt on their cars, and those who do not. By contrast, denying his deduction amounts to an incentive to retain secured debt as a way to lower disposable income in bankruptcy.

In fact, the Ninth Circuit's decision frustrates "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom, supra.* If the Ninth Circuit's holding were upheld on appeal, the end result would not be that Ransom would pay more through his Chapter 13 plan and thus produce a more favorable outcome for unsecured creditors: the result would be that Ransom would be denied the opportunity to make any debt payments in a bankruptcy case.

Ransom's net monthly income, as set forth in Schedules I and J to his petition, is $504.15. That is the amount of money that he has available to pay debts while meeting his living expenses. However, under the approach urged by appellee, and adopted by the lower courts in this matter, the monthly payment which Ransom would be obligated to make in a Chapter 13 plan would be $681.55. This amount is the sum of adding $210.55, the disposable income calculated on Form B22C, and $471, the disallowed vehicle ownership expense.

Where the trustee or the holder of an allowed unsecured claim objects to confirmation of the plan, § 1325(b)(1)(B) obligates the debtor in a Chapter 13 case to commit all his projected disposable income to the payment of unsecured debt over the plan period. If the debtor's disposable income were $681.55, as alleged by MBNA, then the debtor would have to pay this amount each month or the court could not approve his plan.

Under appellee's scenario, Ransom would not pay more each month on his unsecured debt obligations: Ransom would pay nothing at all, because Ransom would not be able to have a Chapter 13 plan confirmed.

The result sought by appellee is contrary to the objectives of BAPCPA and contrary to common sense. BAPCPA seeks to have debtors pay the full sum they are capable of paying toward their unsecured debt. The outcome of appellee's approach is that the debtor would pay nothing through the bankruptcy court. This result is rejected by the great majority of Courts of Appeals that have considered the issue, and it should be rejected by this Court also.

D. The Ninth Circuit Approach Conflicts With Dicta In This Court's *Hamilton v. Lanning* Decision Which Reject Senseless Results Not Intended By Congress

Dicta in this Court's recent decision, *Hamilton v. Lanning,* 560 U.S. ___ (June 7, 2010), conflict with the approach of the Ninth Circuit in the instant case. One must point out that the outcome in *Lanning* is not determinative of the outcome in *Ransom*. *Lanning* holds that the forward-looking approach is preferable to the mechanical approach in calculating "projected disposable income" under § 1325(b)(1). The question of the forward-looking approach, versus the backward-looking approach, does not arise in *Ransom,* which on appeal involves only the question of whether the debtor can deduct a vehicle ownership allowance in the absence of lease or loan payments. Moreover, the Court in *Lanning* observes, "a court taking the forward-looking approach should begin by calculating disposable income, and in most cases, nothing more is required. It is only in unusual cases that a court may go further and take into account other known or virtually certain information about the debtor's future income or expenses." *Hamilton v. Lanning,* 560 U.S. at ___.

In *Ransom,* the forward-looking approach also calls for a computation of projected disposable income for the applicable commitment period. However, no substantial change in circumstances has occurred in this case, and no major alteration in the debtor's economic situation is foreseen. Therefore, in *Ransom* there is no reason to believe that projected disposable income will differ in any significant way from disposable income calculated with reference to the means test.

The outcome in *Ransom* cannot be subsumed under the *Lanning* decision. Nonetheless, there is an important issue in common between the two cases because both involve a computation of disposable income under § 1325(b)(2). The rationale of the Court in considering disposable income for a confirmable plan in *Lanning* is applicable in *Ransom,* even though the specific issue shifts from the time period for determining disposable income in *Lanning* to accepting only car payments as a vehicle ownership cost allowance in *Ransom*. The Court's rationale in analyzing disposable income is to avoid "senseless results" not intended by Congress:

> In cases in which a debtor's disposable income during the 6-month look-back period is either substantially lower or higher than the debtor's disposable income during the plan period, the mechanical approach would produce senseless results that we do not think Congress intended. In cases in which the debtor's disposable income is higher during the plan period, the mechanical approach would deny creditors payments that the debtor could easily make. And where, as in the present case, the debtor's disposable income during the plan period is substantially lower, the mechanical approach would deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements. Here, for example, respondent is an "individual whose income is sufficiently stable and regular" to allow her "to make payments under the plan," § 101(30), and her debts fall below the limits set out in § 109(e). But if the mechanical approach were used, she could not file a confirmable plan. Under § 1325(a)(6), a plan cannot be confirmed unless "the debtor will be able to make all payments under the plan and comply with the plan." And as petitioner concedes, respondent could not possibly

> make the payments that the mechanical approach prescribes.

Hamilton v. Lanning, 560 U.S. at ___.

Two sorts of "senseless results" are identified in the Court's analysis. One is the approach which would "deny creditors payments that the debtor could easily make." *Ibid.* This unfortunate result – denying creditors payments that the debtor is capable of making – is hardly the objective of the BAPCPA legislation. The other counterproductive approach would "deny the protection of Chapter 13 to debtors who meet the chapter's main eligibility requirements." *Ibid.* The Court's reasoning is that if the debtor meets Chapter 13's main eligibility requirements, the debtor should be able to structure a plan to obtain bankruptcy protection.

The *Ransom* holding yields precisely the sort of senseless results that this Court rejects in *Lanning*. Jason Ransom is being denied the protection of Chapter 13 even though he is a debtor who meets the chapter's main eligibility requirements. Ransom is an "individual whose income is sufficiently stable and regular" to allow him "to make payments under a plan," § 101(30), and his debts fall below the limits set out in § 109(e). But if the Ninth Circuit approach were used, he could not file a confirmable plan. Under § 1325(a)(6), a plan cannot be confirmed unless "the debtor will be able to make all payments under the plan and comply with the plan." Ransom's Form B22C lists disposable income of $210.55, based in part on an ownership expense deduction of $471 a month for his car. However, it is uncontested that Ransom's net monthly income, as shown on Schedules I and J, is $504.15. The Ninth Circuit decision, by denying Ransom the vehicle ownership allowance, would raise his disposable income to $681.55 a month. He does not have that amount available to pay unsecured creditors, and thus his plan cannot be approved.

And the Ninth Circuit holding is not beneficial to creditors: it denies them payments that Ransom could easily make. Ransom's proposed Chapter 13 plan commits to making monthly payments of $500.00 for the benefit of unsecured creditors. However, denying him a vehicle ownership deduction would raise his disposable income – and projected disposable income as well – from $210.55 to $681.55, an amount well in excess of any net income he has available to pay unsecured creditors on a monthly basis. His transportation ownership cost allowance, as set forth in the plain language of the statute, should be deducted from current monthly income to arrive at disposable income. Only allowing the vehicle cost deduction, even in the absence of lease or loan payments, can avoid those "senseless results" never intended by Congress.

◆

CONCLUSION

This Court should reverse the judgment of the Ninth Circuit Court of Appeals and remand the case for further proceedings.

Respectfully submitted,

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Means Testing

Census Bureau, IRS Data and Administrative Expenses Multipliers

(Cases Filed Between February 13, 2006, and September 30, 2006, Inclusive)

Section I. Census Bureau Data

In Part III of Bankruptcy Form B22A and Part II of Bankruptcy Form B22C, debtors are instructed to enter the "Applicable median family income." This information is published by the Census Bureau according to State and family size, and the data is updated each year. In addition, pursuant to 11 U.S.C. § 101(39A)(B), the data on this Web site will be further adjusted early each calendar year based upon the Consumer Price Index for All Urban Consumers.

The following link provides the median family income data published for the year 2005, reproduced in a format that is designed for ease of use in completing these bankruptcy forms.

Median Income Figures for Calendar Year 2005 Based on State/Territory and Family Size

Section II. IRS Data

In Part V, Subpart A, of Bankruptcy Form B22A and Part IV, Subpart A, of Bankruptcy Form B22C, debtors are instructed to enter "National Standards" and "Local Standards." This information is updated annually by the IRS. The following links provide the appropriate data, reproduced in a format designed for ease of use in completing these bankruptcy forms.

> **Note:** The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. They are not for use in computing taxes or for any other tax administration purpose. Expense information for tax purposes can be found on the IRS Web site.

1. ***National Standards.*** The National Standards are published by the IRS, and the table includes five (5) subcategories of expenses and their combined total. The National Standards are published by the number of persons and gross income level.

Part V, Subpart B, on Form B22A and Part IV, Subpart B, on Form B22C allow for a qualifying debtor to claim an additional food and clothing ("apparel and services") expense if the debtor's average monthly food and clothing expense exceeds the combined allowances for those two subcategories, not to exceed five (5) percent. For purposes of these bankruptcy forms, the "Food" and "Apparel & services" subcategories have been combined and are provided as a separate line item, which is displayed together with the five (5) percent calculation of those two subcategories combined.

National Standards for Allowable Living Expenses (excluding Alaska & Hawaii)

Alaska – National Standards for Allowable Living Expenses

Hawaii – National Standards for Allowable Living Expenses (includes Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands for purposes of these bankruptcy forms)

> **NOTE:** The IRS does not currently publish National Standards for Allowable Living Expenses for Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands. For purposes of these bankruptcy forms, these Commonwealths and Territories use the "Hawaii – National Standards for Allowable Living Expenses."

2. ***Local Standards.*** The Local Standards are published by the IRS and consist of two primary expense categories, "Housing and Utilities" and "Transportation."

   a. ***Local Housing and Utilities Expense Standards* – By State, County, and Family Size.** The Housing and Utilities Standards are published by the IRS by State (including Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and the District of Columbia), county, and family size. For purposes of these bankruptcy forms, the Housing and Utilities Standards are provided in two components – non-mortgage expenses and mortgage/rent expenses.

   b. ***Local Transportation Expense Standards* – By Metropolitan Statistical Area and Census Region.** The Transportation Standards are published by the IRS in two components. The *Operating Costs & Public Transportation Costs* component of the Transportation Standards is published by number of cars and by Metropolitan Statistical Area (MSA) and Census Bureau region. In order to use the data, you must determine in what Census Bureau region your state is located and whether your county is located in a MSA. The *Ownership Costs* component of the Transportation Standards is published on a national basis, by number of cars. This information, reproduced in a format designed for ease of use in completing these bankruptcy forms, is available at the following link.

NOTE: The IRS does not currently publish transportation standards for Guam, Puerto Rico, the Northern Mariana Islands, or the Virgin Islands. For purposes of these bankruptcy forms, the Virgin Islands and Puerto Rico are included with the Northeast Census Bureau Region, and Guam and the Northern Mariana Islands are included with the West Census Bureau Region.

Section III. Administrative Expenses Multipliers

11 U.S.C. § 707(b)(2)(A)(ii)(III) allows a debtor who is eligible for chapter 13 to include in his/her calculation of monthly expenses the actual administrative expenses of administering a chapter 13 plan in the judicial district where the debtor resides.

The Executive Office for U.S. Trustees issues the schedules of actual administrative expenses which contain, by judicial district, the chapter 13 multiplier needed to complete Official Bankruptcy Forms B22A and B22C (Statement of Current Monthly Income and calculations). Form B22A is the form most chapter 7 debtors will complete and the multiplier is entered on Line 45.b; Form B22C is the form most chapter 13 debtors will complete and the multiplier is entered on Line 50.b.

Schedules of Actual Administrative Expenses of Administering a Chapter 13 Plan (as Required by 11 U.S.C. § 707(b)(2)(A)(ii)(III))

Note:

The original source for the State Median Family Income is the Census Bureau.

The original source for the National and Local Standards is the IRS.

To report any differences between the data on these pages and their original source, please e-mail: ust.mt.help@usdoj.gov.

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[SEAL] U.S. Trustee Program/Dept. of Justice

IRS Local Transportation Expense Standards – West Census Region

(Cases Filed Between February 13, 2006, and September 30, 2006, Inclusive)

For Use with Allowable Transportation Expenses Table
The Operating Costs and Public Transportation Costs sections of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area (MSA). The following table lists the states that comprise each Census Region. Once the taxpayer's Census Region has been ascertained, to determine if an MSA standard is applicable, use the definitions below to see if the taxpayer lives within an MSA (MSAs are defined by county and city, where applicable). If the taxpayer does not reside in an MSA, use the regional standard.

West Census Region:
New Mexico, Arizona, Colorado, Wyoming, Montana, Nevada, Utah, Washington, Oregon, Idaho, California, Alaska, Hawaii

Metropolitan Statistical Areas (MSAs) Within the West Census Region

MSA	**COUNTIES (unless otherwise specified)**	
Los Angeles	*in CA:*	Los Angeles, Orange, Riverside, San Bernadino, Ventura

San Francisco	*in CA:*	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
San Diego	*in CA:*	San Diego
Portland	*in OR:*	Clackamas, Columbia, Marion, Multnomah, Polk, Washington, Yamhill
	in WA:	Clark
Seattle	*in WA:*	Island, King, Kitsap, Pierce, Snohomish, Thurston
Honolulu	*in HI:*	Honolulu
Anchorage	*in AK:*	Anchorage borough
Phoenix	*in AZ:*	Maricopa, Pinal
Denver	*in CO:*	Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, Weld

IRS LOCAL TRANSPORTATION* EXPENSE STANDARDS

West Census Region

Operating Costs & Public Transportation Costs (Line 22, Form B22A) (Line 27, Form B22C)			
Region	**No Car**	**One Car**	**Two Cars**
West Census Region	$252	$338	$420

MSA Locations Within Census Region:			
Anchorage	$319	$341	$423
Denver	$312	$338	$420
Honolulu	$300	$328	$410
Los Angeles	$284	$426	$508
Phoenix	$275	$351	$433
Portland	$194	$297	$379
San Diego	$322	$382	$464
San Francisco	$325	$401	$484
Seattle	$267	$329	$412

Ownership Costs (Lines 23 and 24, Form B22A) (Lines 28 and 29, Form B22C)		
National	**First Car**	**Second Car**
	$471	$332

*Does not include personal property taxes.

Last Update: January 27, 2006 3:37 PM
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**COMMITTEE ON RULES OF
PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF
THE UNITED STATES
WASHINGTON, D.C. 20544**

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JERRY E. SMITH
EVIDENCE RULES

TO: **Honorable David F. Levi, Chair
Standing Committee on Rules
of Practice and Procedure**

FROM: **Honorable Thomas S. Zilly, Chair
Advisory Committee on
Bankruptcy Rules**

DATE: **May 24, 2006**

RE: **Report of the Advisory Committee
on Bankruptcy Rules**

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. First, the Committee recommends that the Standing Committee finally approve and recommend to the Judicial Conference the rules set out in Part II.A.3 of this report. Second, the Committee recommends that the Standing Committee approve for publication in August 2006 the proposed new and amended rules set out in Part II.B.2 of this report. Third, we recommend amending Interim Rule 1007, to be effective on October 1, 2006, as set out in Part II.B.4. Fourth, the Committee recommends that the Standing Committee approve the proposed amendments to the Official Forms in Part II.C.2 of the report and submit them to the Judicial Conference for its approval with an effective date of October 1, 2006. Finally, the Advisory Committee recommends that the new and amended Official Forms as set out in Part II.D.2 of the report be approved for publication in August 2006. Parts II.C.2 and II.D.2 are set out in a separate attachment.

The Advisory Committee considered public comments regarding the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 that were published in August 2005. The Advisory Committee received a number of comments on the proposed amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 9, 2006, the hearing was canceled. The Advisory Committee recommends that the proposed amendments and additions to the Bankruptcy Rules set out in Part II.A.3 be approved for transmittal to the Judicial Conference.

In addition to these new rules and amendments, a proposed amendment to Bankruptcy Rule 3001 was published for comment in August 2005. The Advisory Committee recommends that the proposed amendments to Rule 3001 be withdrawn. The Committee received several comments opposing the recommended amendments to the rule that would have limited the length of documents that could be attached to a proof of a claim. After further consideration of those comments, the Advisory Committee concluded that the proposed amendment should be withdrawn.

The Advisory Committee has spent considerable time on the creation of Interim Rules to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act). President Bush signed the 2005 Act on April 20, 2005, and most of its provisions became effective on October 17, 2005. The Advisory Committee prepared Interim Rules to operate in cases governed by the 2005 Act until final rules could be put in place. The Interim Rules were approved by the Standing Committee and were adopted by standing order in every district in the United States. These adoptions were nearly uniform throughout the country with only a few minor variations in the rules as locally adopted. The Interim Rules comprise the bulk of the package of new rules and rules amendments being recommended for publication.

The proposed rules recommended for publication also include amendments and additions that were not included in the package of Interim Rules that became effective by standing orders on October 17, 2005. For example, one provision of the 2005 Act does not become effective until a rule has been promulgated under the Rules Enabling Act process. Consequently, there was no need to include that rule in the Interim Rules, but the changes in the bankruptcy Code require the adoption of new rules to implement those provisions. The Committee received and considered various comments to the Interim Rules prior to its meeting in March, and the proposed Rules have incorporated these comments as appropriate.

The report includes a statement at the end of each rule or rule amendment being recommended for publication as to whether the proposal was previously approved as an Interim Rule. That statement also identifies any changes in the recommended version of the rule to the existing Interim Rule. While there were changes to many of the Interim Rules, most of the changes were stylistic. More significant amendments were made to Interim Rules 1007, 1010(b), 1011(f), 2002(g)(5), 2015(a)(6), 3002(c)(5), 4003, 4008, and 8001(f)(5). The amendments to Rules 1005, 2015.3, 3016(d), 5001, and 9009 are entirely new and were not included in the Interim Rules. The 2005 Act requires the amendments to Rules 1005, 2015.3, 3016(d) and 9009, while the amendments to Rule 5001 are necessary because of the amendment to 28 U.S.C. § 152(c), which authorizes bankruptcy judges to hold court outside of their districts in emergency situations. Attached to the report is a chart that states the number of the rule being proposed for publication, whether a change in the rule was required by the 2005 Act, whether it was an Interim Rule, and the extent of the change in the rule from the Interim Rule. These rules are set out in Part II.B.2 of the report.

Part II.B.4 contains amendments to Bankruptcy Rule 1007 that are being recommended both for inclusion in the rules for publication and for approval as an Interim Rule that can be recommended to the bankruptcy courts for adoption by standing order in the manner that the Interim Rules were adopted prior to October 17, 2005. The 2005 Act amended the Bankruptcy Code to require that consumer debtors receive credit counseling prior to commencing a bankruptcy case. Interim Rule 1007 implements that provision by requiring debtors to file a certificate that they have completed the counseling in the 180 days prior to the commencement of the case. Case law developments have shown that some debtors have completed the counseling but have been unable to obtain a copy of the certificate. The proposed amendment to Interim Rule 1007(b) and (c) addresses the problem by permitting debtors in this position to make a statement that they have completed the counseling and are awaiting receipt of the appropriate certificate. In that event, the debtor has until 15 days after the filing of the petition to file the certificate with the court.

In tandem with this proposed amendment to the Interim Rule 1007, the Advisory Committee recommends a change to Official Form 1, the voluntary petition, for approval by the Standing Committee and for recommendation for adoption by the Judicial Conference, with an effective date of October 1, 2006. The amendment to the Official Form includes a change that implements the amendment to Interim Rule 1007(b)(3) and also includes a series of cautions intended to inform debtors of the consequences of the filing of a bankruptcy petition. Many pro se debtors are unaware of the significant adverse consequences of filing a petition, and the warnings may deter improvident or premature filings. This will reduce the harm to those debtors as well as ease burdens on clerks who often are called upon to respond to inquiries from debtors on these matters.

In addition to the proposed amendment to the Official Form 1, the Advisory Committee recommends changes to several other Official Forms also with an effective date of October 1, 2006. These amendments, which are described in Section II.C.1, implement the substantial new statistical reporting requirements in the 2005 Act. They are set out in a separate attachment.

The 2005 Act also required the amendment or creation of many Official Forms. Because the forms must be uniform to be truly useful in cases, the amendments and additions to the forms were recommended to the Judicial Conference for its approval in August and October of 2005. The Judicial Conference approved the forms which became effective on October 17, 2005. Time did not allow for the publication of these forms for comment, so the Advisory Committee recommends that the Official Forms that became effective on October 17, 2005, be published for comment along with the Interim Rules. As with the Interim Rules, the Official Forms being proposed for publication also include some minor amendments from those currently in use. The use of the Official Forms and Interim Rules since October 2005 provides a unique opportunity for the Advisory Committee to evaluate the proposed rules and the Official Forms and should enable the bench and bar to offer especially valuable commentary on their workings. The amendments and additions to the Official Forms which are recommended for publication are described in Part II.C.1. Due to their length, these materials are set out in a separate attachment.

Forms 22A, 22B, ~~23C~~ [22C]

COMMITTEE NOTE

A. Overview

Among the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 are interlocking provisions defining "current monthly income" and establishing a means test to determine whether relief under Chapter 7 should be presumed abusive. Current monthly income ("CMI") is defined in § 101(10A) of the Code, and the means test is set out in § 707(b)(2). These provisions have a variety of applications. In Chapter 7, if the debtor's CMI exceeds a defined level the debtor is subject to the means test, and § 707(b)(2)(C) specifically requires debtors to file a statement of CMI and calculations to determine the applicability of the means-test presumption. In Chapters 11 and 13, CMI provides the starting point for determining the disposable income that must be contributed to payment of unsecured creditors. Moreover, Chapter 13 debtors with CMI above defined levels are required by § 1325(b)(3) to complete the means test in order to determine the amount of their monthly disposable income; and, pursuant to § 1325(b)(4), the level of CMI determines the "applicable commitment period" over which projected disposable income must be paid to unsecured creditors.

To provide for the reporting and calculation of CMI and for the completion of the means test where required, three separate official forms have been created – one for Chapter 7, one for Chapter 11, and one for Chapter 13. This note first describes the calculation of CMI that is common to all three of the forms, next describes the means test as set out in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the forms.

B. Calculation of CMI

Although Chapters 7, 11, and 13 use CMI for different purposes, the basic computation is the same in each. As defined in § 101(10A), CMI is the monthly average of certain income that the debtor (and in a joint case, the debtor's spouse) received in the six calendar months before the bankruptcy filing. The definition includes in this average (1) income from all sources, whether or not taxable, and (2) any amount paid by an entity other than the debtor (or the debtor's spouse in a joint case) on a regular basis for the household expenses of the debtor, the debtor's dependents, and (in a joint case) the debtor's spouse if not otherwise a dependent. At the same time, the definition excludes from the averaged income "benefits received under the Social Security Act" and certain payments to victims of terrorism, war crimes, and crimes against humanity.

Each form provides for reporting income items constituting CMI. The items are reported in a set of entry lines – Part II of the Chapter 7 form and Part I of the forms for Chapter 11 and Chapter 13 – that include separate columns for reporting income of the debtor and of the debtor's spouse. The first of these entry lines includes a set of instructions and check boxes indicating when the "debtor's spouse" column must be completed. The instructions also direct the required averaging of reported income.

The subsequent entry lines specify several common types of income and are followed by a "catch-all" line for other income. The specific entry lines address: (a) gross wages; (b) business income; (c) rental income; (d) interest, dividends, and royalties; (e) pension and retirement income; (f) regular contributions to the debtor's household expenses; and (g) unemployment compensation. Gross wages (before taxes) are required to be entered. Consistent with usage in the Internal Revenue Manual and the American Community Survey of the Census Bureau, business and rental income is defined as gross receipts less ordinary and necessary expenses. Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may be a dispute about whether unemployment compensation is a "benefit received under the Social Security Act." The forms take no position on the merits of this argument, but give debtors the option of reporting unemployment compensation separately from the CMI calculation. This separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it. The forms provide for totaling the income lines.

C. The means test: deductions from current monthly income (CMI)

The means test operates by deducting from CMI defined allowances for living expenses and payment of secured and priority debt, leaving disposable income presumptively available to pay unsecured nonpriority debt. These deductions from CMI under are set out in the Code at § 707(b)(2)(A)(ii)-(iv). The forms for Chapter 7 and Chapter 13 have identical sections (Parts V and III, respectively) for calculating these deductions. The calculations are divided into subparts reflecting three different kinds of allowed deductions.

1. Deductions under IRS standards

Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the website of the U.S. Trustee Program, where the relevant IRS allowances can be found. As with all of the deductions in § 707(b)(2)(A)(ii), deductions under the IRS standards are subject to the proviso that they not include "any payments for debts."

The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain an entry line for the applicable allowance.

The IRS Local Standards provide one set of deductions for housing and utilities and another set for transportation expenses, with different amounts for different areas of the country, depending on the size of the debtor's family and the number of the debtor's vehicles. Each amount specified in the Local Standards is treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii) provides for deductions in the "amounts specified under the . . . Local Standards," the forms treat these amounts as allowed deductions. The forms again direct debtors to the website of the U.S. Trustee Program to obtain the appropriate allowances.

The Local Standards for housing and utilities, as published by the IRS for its internal purposes, present single amounts covering all housing expenses; however, for bankruptcy purposes, the IRS has separated these amounts into a non-mortgage component and a mortgage/rent component. The non-mortgage component covers a variety of expenses involved in maintaining a residence, such as utilities, repairs and maintenance. The mortgage/rent component covers the cost of acquiring the residence. For homeowners with mortgages, the mortgage/rent component involves debt payment, since the cost of a mortgage is part of the allowance. Accordingly, the forms require debtors to deduct from the mortgage/rent component their average monthly mortgage payment (including required payments for taxes and insurance), up to the full amount of the IRS mortgage/rent component, and instruct debtors that this average monthly payment is the one reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii). The forms allow debtors to challenge the appropriateness of this method of computing the Local Standards allowance for housing and utilities and to claim any additional housing allowance to which they contend they are entitled, but the forms require specification of the basis for such a contention.

The IRS issues Local Standards for transportation in two components for its internal purposes as well as for bankruptcy: one component covers vehicle operation/public transportation expense and the other ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates, with debtors who do not operate vehicles being given a public transportation allowance. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance. The ownership/lease component, on the other hand, may involve debt payment. Accordingly, the forms require debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the forms for deductions of secured debt under § 707(b)(2)(a)(iii).

The IRS does not set out specific dollar allowances for "Other Necessary Expenses." Rather, it specifies a number of categories for such expenses, and describes the nature of the expenses that may be deducted in each of these categories. Section 707(b)(2)(a)(ii) allows a deduction for the debtor's actual expenses in these specified categories, subject to its requirement that payment of debt not be included. Several of the IRS categories deal with debt repayment and so are not included in the forms. Several other categories deal with expense items that are more expansively addressed by specific statutory allowances. Subpart A sets out the remaining categories of "Other Necessary Expenses" in individual entry lines. Instructions in these entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

Subpart A concludes with a subtotal of the deductions allowed under the IRS standards.

2. Additional statutory expense deductions

In addition to the expense deductions allowed under the IRS standards, the means test makes provision – in subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii) – for six special expense deductions. Each of these additional expense items is set out on a separate entry line in Subpart B, introduced by an instruction that there should not be double counting of any expense already included in the IRS deductions. Contributions to tax-exempt charities provide another statutory expense deduction. Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions (up to 15% of the debtor's gross income), and § 707(b)(1) provides that in considering whether a Chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor . . . continues to make [tax-exempt] charitable contributions." Accordingly, Subpart B also includes an entry line for charitable contributions. The subpart concludes with a subtotal of the additional statutory expense deductions.

3. Deductions for payment of debt

Subpart C deals with the means test's deductions from CMI for payment of secured and priority debt, as well as a deduction for administrative fees that would be incurred if the debtor paid debts through a Chapter 13 plan. In accord with § 707(b)(2)(A)(iii), the deduction for secured debt is divided into two entry lines – one for payments that are contractually due during the 60 months following the bankruptcy filing, the other for amounts needed to retain necessary collateral securing debts in default. In each situation, the instructions for the entry lines require dividing the total payment amount by 60, as the statute directs. Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line, also requiring division by 60. The defined deduction for the expenses of administering a Chapter 13 plan is allowed by § 707(b)(2)(A)(ii)(III) only for debtors eligible for Chapter 13. The forms treat this deduction in an entry line requiring the eligible debtor to state the amount of the prospective Chapter 13 plan payment and multiply that payment amount by the percentage fee established for the debtor's district by the Executive Office for United States Trustees. The forms refer debtors to the website of the U.S. Trustee Program to obtain this percentage fee. The subpart concludes with a subtotal of debt payment deductions.

4. Total deductions

Finally, the forms direct that the subtotals from Subparts A, B, and C be added together to arrive at the total of allowed deductions from CMI under the means test.

5. Additional claimed deductions

The forms do not provide for means-test deductions from CMI for expenses in categories that are not specifically identified as "Other Necessary Expenses" in the Internal Revenue Manual. However, debtors may wish to claim expenses that do not fall within the categories listed as "Other Necessary Expenses" in the forms. Part VII of the Chapter 7 form and Part VI of the Chapter 13 form provide for such expenses to be identified and totaled. Although expenses listed in these sections are not deducted from CMI for purposes of the means-test calculation, the listing provides a basis for debtors to assert that these expenses should be deducted from CMI under § 707(b)(2)(A)(ii)(I), and that the results of the forms' calculation, therefore, should be modified.

D. The chapter-specific forms

1. Chapter 7

The Chapter 7 form has several unique aspects. The form includes, in the upper right corner of the first page, a check box directing the debtor to state whether or not the calculations required by the form result in a presumption of abuse. The debtor is not bound by this statement and may argue, in response to a motion brought under § 707(b)(1), that there should be no presumption despite the calculations required by the form. The check box is intended to give clerks of court a conspicuous indication of the cases for which they are required to provide notice of a presumption of abuse pursuant to § 342(d).

Part I implements the provision of § 707(b)(2)(D) that excludes certain disabled veterans from all means-testing, making it unnecessary to compute the CMI of such veterans. Debtors who declare under penalty of perjury that they are disabled veterans within the statutory definition are directed to verify their declaration in Part VII, to check the "no presumption" box at the beginning of the form, and to disregard the remaining parts of the form.

Part II computes CMI. Section 707(b)(7) prohibits a motion to dismiss based on the means test's presumption of abuse if the debtor's annualized CMI does not exceed a defined median state income. For this purpose, the statute directs that CMI of the debtor's spouse be combined with the debtor's CMI even if the debtor's spouse is not a joint debtor, unless the debtor declares under penalty of perjury that the spouses are legally separated or living separately other than for purposes of evading the means test. Accordingly, the calculation of CMI in Part II directs a computation of the CMI of the debtor's spouse not only in joint cases, but also in cases of married debtors who do not make the specified declaration, and the CMI of both spouses in these cases is combined for purposes of determining standing under § 707(b)(7).

Part III compares the debtor's CMI to the applicable state median income for purposes of § 707(b)(7). It then directs debtors whose income does not exceed the applicable median to verify the form, to check the "no presumption" box at the beginning of the form, and not to complete the remaining parts of the form. Debtors whose CMI does exceed the applicable state median are required to complete the remaining parts of the form.

Part IV adjusts the CMI of a married debtor, not filing jointly, whose spouse's CMI was combined with the debtor's for purposes of determining standing to assert the means-test presumption. The means test itself does not charge a married debtor in a non-joint case with the income of the non-filing spouse, but rather only with contributions made by that spouse to the household expenses of the debtor or the debtor's dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI of Part II to be reduced by the amount of the non-filing spouse's income that was not contributed to the household expenses of the debtor or the debtor's dependents.

Part V provides for a calculation of the means test's deductions from the debtor's CMI, as described above.

Part VI provides for a determination of whether the debtor's CMI, less the allowed deductions, gives rise to a presumption of abuse under § 707(b)(2)(A). Depending on the outcome of this determination, the debtor is directed to check the appropriate box at the beginning of the form and to sign the verification in Part VIII. Part VII allows the debtor to claim additional deductions, as discussed above.

2. Chapter 11

The Chapter 11 form is the simplest of the three, since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual Chapter 11 debtor's disposable income. Section 1129(a)(15) requires payments of disposable income "as defined in section 1325(b)(2)," and that paragraph allows calculation of disposable income under judicially-determined standards, rather than pursuant to the means-test deductions, specified for higher income Chapter 13 debtors by § 1325(b)(3). However, § 1325(b)(2) does require that CMI be used as the starting point in the judicial determination of disposable income, and so the Chapter 11 form requires this calculation (in Part I of the form), as described above, together with a verification (in Part II).

3. Chapter 13

Like the Chapter 7 form, the form for Chapter 13 debtors contains a number of special provisions. The upper right corner of the first page includes check boxes requiring the debtor to state whether, under the calculations required by the statement, the applicable commitment period under § 1325(b)(4) is three years or five years and whether § 1325(b)(3) requires the means-test deductions to be used in determining the debtor's disposable income. The check box is intended to inform standing trustees and other interested parties about these items, but does not prevent the debtor from arguing that the calculations required by the form do not accurately reflect the debtor's disposable income.

Part I is a report of income to be used for determining CMI. Section 1325(b)(4) imposes a five-year applicable commitment period – rather than a three-year period – if the debtor's annualized CMI is not less than a defined median state income. For this purpose, as under § 707(b)(4), the statute requires that the CMI of the debtor's spouse to be combined with the debtor's CMI, and no exception exists for spouses who are legally separated or living separately. Accordingly, the report of income in Part I directs a combined reporting of the income of both spouses in all cases of married debtors.

Part II computes the applicable commitment period by annualizing the income calculated in Part I and comparing it to the applicable state median. The form allows debtors to contend that the income of a non-filing spouse should not be treated as CMI and permits debtors to claim a deduction for any income of a non-filing spouse to the extent that this income was not contributed to the household expenses of the debtor or the debtor's dependents. The debtor is directed to check the appropriate box at the beginning of the form, stating the applicable commitment period.

Part III compares the debtor's CMI to the applicable state median, allowing a determination of whether the means-test deductions must be used, pursuant to § 1325(b)(3), in calculating disposable income. For this purpose, since § 1325(b)(3) does not provide for including the income of the debtor's spouse, the form directs a deduction of the income of a non-filing spouse that is not contributed to the household expenses of the debtor or the debtor's dependents. Again, the debtor is directed to check the appropriate box at the beginning of the form, indicating whether the means-test deductions are applicable. If so, the debtor is directed to complete the remainder of the form. If not, the debtor is directed to complete the verification in Part VII but not complete the other parts of the form.

Part IV provides for calculation of the means-test deductions provided in § 707(b)(2), described above, as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part V provides for three adjustments required by special provisions affecting disposable income in Chapter 13. First, § 1325(b)(2) itself excludes from the CMI used in determining disposable income certain "child support payments, foster care payments, [and] disability payments for a dependent child." Because payments of this kind are included in the definition of CMI in § 101(10A), a line entry for deduction of these payments is provided. Second, a line entry is provided for deduction of contributions by the debtor to certain retirement plans, listed in § 541(b)(7)(B), since that provision states that such contributions "shall not constitute disposable income, as defined in section 1325(b)." Third, the same line entry also allows a deduction from disposable income for payments on loans from retirement accounts that are excepted from the automatic stay by § 362(b)(19), since § 1322(f) provides that for a "loan described in section 362(b)(19) . . . any amounts required to repay such loan shall not constitute 'disposable income' under section 1325."

The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorney fees. No specific statutory allowance for such a deduction exists, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.

Part VI allows the debtor to claim additional deductions, as described above, and Part VII is the verification.

October 2006 Supplement to Committee Note

Forms 22A, Line 43, and Form 22C, Line 48, are amended to delete the phrase "in default" with respect to "Other payments on secured claims." A debtor may be required to make other payments to the creditor even when the debt is not in default, such as to retain collateral. Form 22C, Line 17, also is amended to require all chapter 13 debtors, including those whose income falls below the applicable median income, to determine their disposable income under § 1325(b)(3) of the Code by completing Part III of the form. All three forms contain stylistic amendments to conform the wording more closely to that used in the 2005 Act.

RESPONDENT'S BRIEF

No. 09-907

Supreme Court, U.S.
FILED
AUG 0 6 2010
OFFICE OF THE CLERK

In The
Supreme Court of the United States

◆

JASON M. RANSOM, PETITIONER,

v.

MBNA AMERICA BANK, N.A.

◆

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

◆

BRIEF FOR RESPONDENT

◆

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AUGUST 6, 2010

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

PARTIES TO THE PROCEEDING

The parties are as stated in the caption. MBNA America Bank, N.A. is now known as FIA Card Services, N.A.

CORPORATE DISCLOSURE STATEMENT

MBNA America Bank, N.A., now known as FIA Card Services, N.A., is a wholly owned subsidiary of NB Holdings Corporation, which is a wholly owned subsidiary of Bank of America Corporation, which is publicly traded. No publicly traded corporation owns ten percent or more of the stock of Bank of America Corporation.

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INTRODUCTION

Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") to prevent abuse of bankruptcy relief. The primary statutory goal of BAPCPA's so-called means test was to ensure that debtors who can repay some of their debts be required to do so before receiving a discharge. The means test presumes that debtors whose disposable income exceeds a certain amount cannot use Chapter 7; instead it attempts to channel them into Chapter 13. BAPCPA also uses its definition of disposable income to require Chapter 13 debtors to repay creditors the maximum amount that they can afford, permitting them to retain only those amounts for expenses that are "reasonably necessary."

Petitioner contends that BAPCPA permits him to reduce his Chapter 13 payment plan amount—and thereby keep from his creditors—$471 per month for a car payment that he does not have. Even though petitioner owns his car free and clear, he argues that he is entitled to a deduction for vehicle ownership expense based upon the Internal Revenue Service's Local Standards.

A deduction for such "phantom" car payments is not supported by the text of the statute. BAPCPA permits debtors to deduct as monthly expenses only "applicable" expense amounts under the IRS National and Local Standards. The IRS vehicle ownership expense amount is not "applicable" to a debtor who has no car loan or lease payment at all. Moreover, by permitting debtors to retain amounts to pay nonexistent expenses, petitioner's reading would contravene the central purpose of BAPCPA's means test: maximizing repayment of debt by debtors who have the ability to repay.

The judgment should be affirmed.

STATEMENT OF THE CASE

A. Statutory Framework

Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, to address concerns that debtors with steady incomes, who could in fact repay a substantial portion of their unsecured debts (usually credit card debt), were seeking discharge of their debts under Chapter 7. Congress sought to have such debtors instead repay a portion of their debts. H.R. Rep. No. 109-31, pt. 1, at 2, 5 (2005).

To accomplish this goal, Congress sought to channel more debtors into Chapter 13 bankruptcy proceedings. BAPCPA also sought to ensure that Chapter 13 debtors were paying their unsecured creditors as much as they could afford, *i.e.*, all of their "projected disposable income." To this end, BAPCPA imposed additional clarity to ensure that debtors were spending only reasonable amounts on permitted items. This case involves BAPCPA's new definition of a debtor's "disposable income" as well as the concept of "projected" disposable income.

1. The Bankruptcy Code before enactment of BAPCPA

a. Before BAPCPA's enactment, many debtors were inappropriately invoking the discharge provisions of Chapter 7. Under Chapter 7 (then and now), debtors' nonexempt assets are liquidated and used to pay claims, and debtors receive a complete discharge of most debts. 6 *Collier on Bankruptcy* ¶ 700.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010). Debtors, however, may retain assets that are exempt under federal or state law. Debtors select whether to apply the federal or state exemptions (unless their State has opted out of the federal exemptions). 11 U.S.C. § 522. Many States' exemption laws are quite generous. 4 *Collier on Bankruptcy* ¶ 522.01. Accordingly, before BAPCPA, many debtors were opting to receive immediate, unconditional discharges through Chapter 7 rather than to pay down debts over time through Chapter 13. H.R. Rep. No. 109-31, pt. 1, at 5 & n.18.

Moreover, the Bankruptcy Code did not give courts the tools to stop debtors with the ability to repay from pursuing Chapter 7. The Code permitted the bankruptcy court to dismiss a Chapter 7 case involving an individual debtor with primarily consumer debts "if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter." 11 U.S.C. § 707(b) (2004). But there were obstacles to a court's use of this power. For example, the Code created a presumption that a debtor petitioning under Chapter 7 was entitled to relief. *See id.* § 707(b) (2004) ("There shall be a presumption in favor of granting the relief requested by the debtor."). Moreover, courts generally applied the "substantial abuse" standard through a "totality of the circumstances" test. Under this test, the ability to repay creditors out of future disposable income was a significant factor. But some courts held that the ability to repay was not dispositive and did not alone mandate dismissal of a Chapter 7 case. *See Stewart v. U.S. Trustee (In re Stewart)*, 175 F.3d 796, 809 (10th Cir. 1999); *First USA v. Lamanna (In re Lamanna)*, 153 F.3d 1, 4-5 (1st Cir. 1998); *Green v. Staples (In re Green)*, 934 F.2d 568, 572 (4th Cir. 1991).

In addition, only the court or the United States Trustee could raise an allegation of substantial abuse; creditors and Chapter 7 trustees lacked standing to seek dismissal for substantial abuse. 11 U.S.C. § 707(b) (2004) (allegation could be brought by "the court, on its own motion[,] or on a motion by the United States Trustee, but not at the request or suggestion of any party in interest").

These circumstances meant that many persons with steady incomes were able to discharge all of their unsecured debts through Chapter 7, even though they had the ability to repay.

b. In contrast to Chapter 7, Chapter 13 of the Bankruptcy Code allows unsecured debts to be paid out of future earnings, rather than being limited to nonexempt property of the estate.

Chapter 13 requires debtors to repay unsecured creditors at least as much through a Chapter 13 plan as the creditors would have received through a hypothetical Chapter 7 liquidation. 11 U.S.C. § 1325(a)(4). Creditors cannot be worse off, and are usually better off, when a debtor uses Chapter 13. But because Chapter 13 relief is purely voluntary on the part of the debtor, courts cannot force debtors into a repayment plan. Before BAPCPA's enactment, Congress tried to make Chapter 13 more attractive by, for example, providing a broader discharge. 8 *Collier on Bankruptcy* ¶ 1328.02[2][b].

In addition, before BAPCPA's enactment, Chapter 13 provided that if the trustee or an unsecured creditor objected to confirmation of the debtor's proposed plan, the court could not confirm the plan unless, *inter alia*, "the plan provide[d] that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan [would] be applied to make payments under the plan." *Id.* § 1325(b)(1)(B) (2004).

In practice, however, Chapter 13 lacked clarity as to how much of a debtor's income should be used to pay unsecured creditors. "Disposable income" was defined broadly as "income which is received by the debtor and which is not reasonably necessary to be expended" for (1) "the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions * * * to a qualified religious or charitable entity or organization" and (2) "if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business." *Id.* § 1325(b)(2) (2004). Requiring bankruptcy judges to determine what expenses were reasonably necessary led to wide-ranging, often inconsistent results. *In re Slusher*, 359 B.R. 290, 294 (Bankr. D. Nev. 2007).

2. BAPCPA's amendments to Sections 707 and 1325 of the Bankruptcy Code

BAPCPA sought to introduce more clarity into the calculation of the "disposable income" of debtors with monthly incomes that exceed the median income for comparably sized households in their States ("above-median debtors").

This disposable-income calculation plays two important roles. First, in Chapter 13, disposable income is used to calculate the minimum amount that an above-median debtor must dedicate to repaying unsecured creditors in the debtor's proposed Chapter 13 plan. And second, it is used in the means test that BAPCPA added to Chapter 7, which determines a debtor's presumptive ineligibility for Chapter 7 relief.

a. As amended, Chapter 13 still requires as a prerequisite to plan confirmation that "all of the debtor's projected disposable income to be received in the applicable commitment period * * * be applied to make payments to unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(B). For above-median debtors, Section 1325 now requires that the commitment period be five years, unless the plan provides for payment in full of all unsecured claims over a shorter period. *Id.* § 1325(b)(4)(A)(ii), (B).

"Disposable income" is defined under Chapter 13 as "current monthly income received by the debtor * * * less amounts reasonably necessary to be expended" (1) "for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation," (2) "for charitable contributions," and (3) "if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business." *Id.* § 1325(b)(2). "Current monthly income" is defined as "the average monthly income from all sources that the debtor receives" during the six-month period before filing the bankruptcy petition. *Id.* § 101(10A)(A).

For above-median debtors, "[a]mounts reasonably necessary to be expended," other than charitable contributions, are calculated "in accordance with" Section 707(b)(2)(A) and (B). *Id.* § 1325(b)(3).

In turn, Section 707(b)(2)(A) provides for three categories of expenses: (1) the debtor's "monthly expenses," *id.* § 707(b)(2)(A)(ii); (2) the debtor's "average monthly payments on account of secured debts," *id.* § 707(b)(2)(A)(iii); and (3) the debtor's "expenses for payment of all priority claims," *id.* § 707(b)(2)(A)(iv).

The primary issue in this case is the first category, the debtor's "monthly expenses." Calculation of the debtor's "monthly expenses" starts with determining "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards * * * issued by the Internal Revenue Service for the area in which the debtor resides." *Id.* § 707(b)(2)(A)(ii)(I). The debtor also is entitled to deduct "actual monthly expenses for the categories specified as Other Necessary Expenses" by the IRS. *Ibid.* The Standards "as in effect on the date of the order for relief" govern. *Ibid.*; *see id.* § 301(b) ("The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.").

BAPCPA then provides for potential deviations from those Standards. Upon showing reasonable necessity, the debtor may receive additional allowances for food and clothing of up to five percent of the applicable Standards amounts, *id.* § 707(b)(2)(A)(ii)(I), as well as for housing and utilities based on excessive energy costs, *id.* § 707 (b)(2)(A)(ii)(V). "In addition," the debtor's "monthly expenses" include reasonably necessary expenses for (1) maintaining the debtor's safety from family violence, (2) care and support of elderly, chronically ill, or disabled family members, (3) administering a

Chapter 13 plan, and (4) education of dependent children. *Id.* § 707(b)(2)(A)(ii)(I)-(IV).

The second and third categories of amounts reasonably necessary to be expended are calculated as follows. The "average monthly payments on account of secured debts" is calculated as the sum of "the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition," plus "any additional payments to secured creditors necessary for the debtor * * * to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts," with the sum "divided by 60." *Id.* § 707(b)(2)(A)(iii).

The "expenses for payment of all priority claims" is "the total amount of all debts entitled to priority, divided by 60." *Id.* § 707(b)(2)(A)(iv). Priority claims include claims for domestic support obligations, bankruptcy administrative expenses, wages for the debtor's business, and certain back taxes. *Id.* § 507(a).

b. The three categories of amounts reasonably necessary to be expended are also relevant to Chapter 7.

BAPCPA repealed the presumption that a Chapter 7 debtor is entitled to relief. BAPCPA instead provides a means test for above-median debtors. If the debtor's "disposable income" is more than a certain threshold, "the court shall presume abuse exists." *Id.* § 707(b)(2)(A)(i).[1] Upon a finding of abuse, the court may now either dismiss the case or, with the debtor's consent, convert it to a Chapter 13 case. *Id.* § 707(b)(1). And now, not only the court or the United States Trustee, but also the Chapter 7 trustee and any party in interest, may move to dismiss a Chapter 7 case for abuse. *Ibid.*

3. The IRS National and Local Standards

As noted, Section 707(b)(2)(A)(ii)(I) refers to the "the National Standards and Local Standards * * * issued by the Internal Revenue Service." 11 U.S.C. § 707(b)(2)(A)(ii)(I). The IRS established the Standards for use in calculating taxpayers' ability to pay delinquent taxes. *See* App., *infra*, 1a (IRS, *Collection Financial Standards* (2006), http://web.archive.org/web/20060705012657/www.irs.gov/individuals/article/0,,id=96543,00.html).[2]

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[1] That threshold, as adjusted by the Judicial Conference of the United States, *see* 11 U.S.C. § 104(a), is currently the lesser of: (1) 25% of the debtor's non-priority unsecured claims, or $7,025, whichever is greater, or (2) $11,725. 11 U.S.C. § 707(b)(2)(A)(i); 75 Fed. Reg. 8747, 8749 (Feb. 25, 2010).

[2] Because petitioner filed his bankruptcy petition on July 5, 2006, Pet. App. 3, 16-17, this brief (unless otherwise noted) refers to the IRS Standards as of the date of his filing. *See* 11 U.S.C. § 707(b)(2)(A)(ii)(I); *Id.* § 301(b). The relevant 2006 Standards are attached as an appendix to this brief at App., *infra*, 1a-12a. Relevant excerpts of the Internal Revenue Manual are also attached at App., *infra*, 13a-27a.

The National Standards contain five categories of expenses: (1) food, (2) housekeeping supplies, (3) apparel and services, (4) personal care products and services, and (5) miscellaneous. App., *infra*, 1a. The Collection Financial Standards provide that "[t]axpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent." App., *infra*, 1a.

The Local Standards cover two categories of expenses: (1) housing and utilities and (2) transportation. App., *infra*, 2a. The "Allowable Living Expenses for Transportation" are broken down into "Ownership Costs" and "Operating Costs & Public Transportation." App., *infra*, 5a-12a (IRS, *Allowable Living Expenses for Transportation* (2006), http://web.archive.org/web/20060710043245/www.irs.gov/businesses/small/article/0,,id=104623,00.html). Ownership costs cover "monthly loan or lease payments." App., *infra*, 2a. At the time that petitioner filed his bankruptcy petition, the maximum ownership allowance for a "First Car" was $471 and for a "Second Car" was $332. App., *infra*, 5a.

The IRS's Collection Financial Standards expressly state that a taxpayer is not allowed an allocation for ownership expenses unless he in fact has a car payment: "If a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." App., *infra*, 3a. The Collection Financial Standards further provide that the

Local Standards are the "[m]aximum allowances" for these categories. App., *infra*, 1a. "Unlike the National Standards, the taxpayer is allowed the amount actually spent or the standard, whichever is less." App., *infra*, 1a.

The IRS's *Financial Analysis Handbook* of the Internal Revenue Manual, which is separate from its Collection Financial Standards, contains similar guidance. *See* App., *infra*, 16a, 20a, §§ 5.15.1.7 ¶ 4.B & 5.15.1.9 ¶ 1.B (IRS, *Internal Revenue Manual* (2006), http://web.archive.org/web/20060710164645/www.irs.gov/irm/part5/ch15s01.html).

4. Official Forms 22A and 22C

In 2005, pursuant to the recommendation of the Advisory Committee on Rules of Bankruptcy Procedure, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States adopted two official forms for use in performing the disposable-income calculation. Official Form 22A is used in Chapter 7 cases to determine the debtor's current monthly income and perform the means-test calculation. Official Form 22C is used in Chapter 13 cases, such as this one, to calculate the debtor's current monthly income and disposable income and to determine the applicable commitment period for the Chapter 13 plan.

Lines 28 and 29 of Official Form 22C pertain to calculating the permissible transportation ownership/lease expenses under the Local Standards.

Line 28 instructs the debtor to "[c]heck the number of vehicles for which you claim an ownership/lease expense," and it provides the options of "1" and "2 or more." J.A. 49. If the debtor claims one vehicle, the form instructs the debtor as follows: (1) "Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car"; (2) "enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle I, as stated in Line 47"; and (3) "subtract Line b from Line a" but "[d]o not enter an amount less than zero." J.A. 49 (emphasis omitted). The result is the claimed ownership transportation deduction for the vehicle and is entered on Line 28. If the debtor checks "2 or more," the debtor repeats the process for the second vehicle and enters the result on Line 29.

The debtor enters the average monthly payments on account of secured debts on Line 47 of Form 22C. J.A. 52. On the form, as stated above, the average monthly payments for debts secured by a claimed vehicle are deducted from the Local Standards transportation ownership allowances in Lines 28 and 29. These same instructions appear on Form 22A's relevant transportation ownership/lease expense lines.

Forms 22A and 22C leave open the question whether a vehicle qualifies for an IRS Local Standards transportation ownership expense deduction. They simply instruct the debtor to identify the number of vehicles for which such an expense is "*claim[ed]*." J.A. 49 (emphasis added). Indeed, since 2007, the Advisory Committee notes to the forms have stated: "The forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance." Report of Advisory Committee on Rules of Bankruptcy Procedure, *2005-2008 Committee Note, Forms 22A, 22B, & 22C* at 12 (Jan. 2008), http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_1208/B_22_CN_cum120108.pdf.

B. Proceedings Below

1. Petitioner is the type of above-median debtor about whom Congress was concerned when it enacted BAPCPA. As of 2006, petitioner was single with no dependents; he earned an annual salary of $51,000 and had been steadily employed with the same employer for over five years; he had health insurance through his employer and no large medical expenses; and he was paying approximately 25 percent of his income for his mortgage and property taxes. But he also had accumulated over $82,000 in credit card debt over the course of four years, including $32,896.73 owed to respondent MBNA. Pet. App. 3; J.A. 41.[3]

Petitioner filed for bankruptcy relief under Chapter 13 on July 5, 2006. Pet. App. 3, 16-17. Among the assets listed was a 2004 Toyota Camry valued at $14,000. Pet. App. 3; J.A. 38. He reported that he made no car payments and owned the car free and clear. Pet. App. 3; J.A. 42, 44.

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[3] At that time, the median income for a household of one in Nevada was $38,506. Pet. App. 17 n.3.

Despite having no car payment of any kind, petitioner claimed on line 28 of Form 22C a monthly transportation ownership expense of $471, the amount at that time from the IRS Standards. Pet. App. 3; J.A. 49. Petitioner's monthly income was $4,248.56. His total claimed deductions were $4,038.01, yielding a monthly "disposable income" of $210.55. Pet. App. 3; J.A. 53.

In his proposed Chapter 13 plan, petitioner proposed a payment schedule of $500 per month for 60 months, totaling $30,000. Only $20,000 of that total would go toward his credit card debt; the remaining $10,000 would go to pay for attorney and trustee compensation. Pet. App. 3; J.A. 55-56. That would have left unpaid over $60,000 in credit card debt.

Had petitioner not claimed a transportation ownership expense, he would have had an additional $471 per month in disposable income, for a total of $681.55, or $40,893 over 60 months. Had that entire additional amount been devoted toward plan payments, then the 60-month plan would have further reduced his credit card debts by an additional $10,893.

2. The Chapter 13 Trustee objected to confirmation of petitioner's plan on three separate grounds, including that petitioner sought an ownership expense for a vehicle that is paid in full. J.A. 60.

Respondent MBNA likewise objected to confirmation of the plan on the ground that if a debtor owns a vehicle but "does not actually have a car payment on it, the Debtor should not be allowed the ownership deduction for the automobile." J.A. 67. Respondent asserted that petitioner's disposable income should have been $681.55 per month ($210.55 in reported disposable income plus $471, the amount of the claimed transportation ownership deduction) and that the plan therefore could not be confirmed under 11 U.S.C. § 1325(b)(1)(B), (b)(2)(A). Pet. App. 4; J.A. 71.

3. The bankruptcy court denied confirmation of petitioner's Chapter 13 plan because, contrary to the statutory requirement, the plan did not devote petitioner's entire disposable income to paying his creditors. Pet. App. 36-48. Relying on its earlier decision in *In re Slusher*, 359 B.R. at 305-310, the bankruptcy court concluded that petitioner "may only deduct a vehicle ownership expense if he is currently making loan or lease payments on that vehicle." Pet. App. 41.

4. The Bankruptcy Appellate Panel affirmed. Pet. App. 15-35. That court acknowledged conflicting authority, Pet. App. 23-29, but found persuasive the rationale of those courts that had disallowed the deduction, Pet. App. 30. The court observed that "Congress has deemed the expense of owning a car to be a basic expense that debtors can deduct" in calculating disposable income. Pet. App. 31. But "what is important is the payments that debtors actually make, not how many cars they own, because the payments

that debtors make are what actually affect their ability to make payments to their creditors." Pet. App. 31-32.

The Bankruptcy Appellate Panel based its conclusion on the "statutory language, plainly read." Pet. App. 30 n.18. The court held that an ownership expense is not an "*applicable* monthly expense amount[ ]," and therefore may not be deducted, unless the debtor "in fact has such an [ownership] expense." Pet. App. 32. The court further relied on the "ordinary, common meaning of 'applicable,'" which is "capable of or suitable for being applied," to conclude that an ownership expense allowance is not capable of being applied to a debtor who has no lease or loan payments on a vehicle. Pet. App. 32 (quoting *Merriam-Webster's Collegiate Dictionary* 60 (11th ed. 2005)). To hold otherwise would "read[ ] 'applicable' right out of the Bankruptcy Code." Pet. App. 33.

5. The court of appeals affirmed. Pet. App. 1-14. Like the Bankruptcy Appellate Panel, the court based its holding on the plain language of the statute, concluding that the provision "does not allow a debtor to deduct an 'ownership cost' * * * that the debtor does not have." Pet. App. 11.

The court of appeals reasoned that "[a]n 'ownership cost' is not an 'expense'—either actual or applicable—if it does not exist, period." Pet. App. 11. The court observed that it would be "[i]ronic" to "diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor." Pet. App. 11.

SUMMARY OF ARGUMENT

I.

The plain text of BAPCPA does not permit a debtor without a car payment to deduct phantom transportation ownership expenses from current monthly income when calculating disposable income.

A.

BAPCPA permits above-median debtors to deduct from current monthly income "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards * * * for the area in which the debtor resides." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

1. Under the plain and ordinary meaning of "applicable"—which means "capable of being applied," "having relevance," and "fit, suitable, or right to be applied"—a debtor with no car payment has no applicable transportation ownership expense. Where the debtor has no car payment, there is no ownership expense amount from the IRS Standards that is relevant, suitable, or capable of being applied to the debtor. The conclusion that simply owning a car does not automatically entitle a debtor to a deduction for the ownership expense amount is buttressed by the

fact that the Standards distinguish "Ownership Costs" from "Operating Costs."

2. The fact that Section 707(b)(2)(A)(ii)(I) uses both the term "applicable" when referring to the National and Local Standards and "actual" when referring to other expenses does not support petitioner. At most, the use of different words suggests that Congress meant for the terms to have different meanings. But requiring that a debtor in fact have a car payment for the transportation ownership expense amount to be "applicable" to him does not result in "actual" and "applicable" having the same meaning. The amount of the deduction for "applicable" expenses under the National and Local Standards often will not be the actual amount incurred by the debtor.

3. Petitioner's reading of "applicable" finds no support in the provision in Section 707(b)(2) that states that, "[n]otwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." *Id.* § 707(b)(2)(A)(ii)(I). Petitioner suggests that this provision means that the calculation of monthly expenses by reference to the National and Local Standards must be performed without regard to whether the debtor in fact has such an expense. But the fact that monthly expenses "shall not include any payments for debts" does not mean that they should include nonexistent expenses for which there are no payments of any kind.

In any event, the Court need not decide in this case how a debtor who actually is making car payments on a debt should calculate his deduction. Here, petitioner is not making secured car payments, car lease payments, or car payments of any kind. As such, the Standard for ownership expenses under subparagraph (ii) is simply not applicable.

B.

The plain meaning of the term "applicable" is bolstered by the statute's incorporation of the "National Standards and Local Standards" issued by the IRS.

1. In petitioner's view, the Standards regarding transportation ownership consist exclusively of the table that provides amounts based on the number of cars. But it is not possible simply to look to the table alone because the table, without some guidance as to how to read it, is meaningless.

The statute's reference to IRS's Standards is better read as referring to the IRS's Collection Financial Standards, which are concise guidelines (separate from the Internal Revenue Manual) into which the table is incorporated. Since BAPCPA's enactment, the Collection Financial Standards have provided that if the debtor has no car payment, the debtor is not entitled to the ownership costs portion of the transportation Standards.

2. Moreover, although the Court need not look to the Internal Revenue Manual to resolve this case, the statute implicitly refers to it and approves of its use. Like the Collection Financial Standards, the Internal Revenue Manual consistently has provided that the applicable ownership expense amount for a debtor with no car payment is zero. Moreover, the legislative history is replete with references to the Internal Revenue Manual's guidelines on how to implement the Standards.

3. Petitioner's argument that he may have ownership expenses apart from car payments—*e.g.*, for insurance, licensing fees, taxes, depreciation, and vehicle replacement—is incorrect. Under the Standards, insurance and licensing fees are vehicle operating costs, not ownership costs. Taxes are not ownership costs but rather are included in the IRS's Other Expenses category. Depreciation is not an out-of-pocket cost with which the Bankruptcy Code is concerned; rather, it is a decline in the car's value.

Nor are "replacement costs" applicable ownership expenses, as petitioner contends. There is no indication that Congress sought to ensure that debtors with a paid-off vehicle could save for the purchase of a new vehicle during the Chapter 13 commitment period; rather, Congress wanted existing unsecured debts to be paid down as much as possible. If necessary after confirmation, the debtor may move to modify the plan payments under Section 1329.

C.

1. Permitting phantom car payments to be deducted in calculating disposable income would contravene Congress's primary purpose in enacting BAPCPA: to ensure that debtors who are able to repay some of their unsecured debts actually repay as much as they can afford before receiving a discharge. Contrary to that purpose, petitioner's interpretation would deny unsecured creditors $28,260 ($471 per month over 60 months) that is not necessary for the debtor's maintenance and support. Where a debtor already owns a car outright, it would make no sense, and would conflict with Congress's stated intent, to permit the debtor to withhold from unsecured creditors amounts to make nonexistent car payments.

2. Petitioner's interpretation also should be rejected because it would convert what the IRS has always considered a ceiling on expenses into a floor. There is no evidence that Congress, in entitling a debtor to "applicable" Standards expense amounts, meant to convert those amounts from maximums to minimums. Worse still, those minimums would be available only to above-median debtors, whereas below-median debtors would be limited to their actual expenses.

D.

Petitioner's reliance on the Official Bankruptcy Forms is misplaced. Contrary to his argument, Official Form 22C did not require him to deduct an ownership expense for the car he owns free and clear. Rather, the form instructed him to deduct an ownership expense for each vehicle for which he "claim[s]" such an expense. The form takes no position on whether a debtor must actually be making a payment on a vehicle to claim the ownership allowance.

Even if the form did support petitioner's interpretation, it would be contrary to the text of the Bankruptcy Code and would thus be invalid.

II.

In the alternative, even if the Court were to deem a nonexistent transportation ownership expense "applicable" to the debtor, the judgment should be affirmed because the nonexistent expense should not be deducted from petitioner's "projected" disposable income. *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). If petitioner is allowed to deduct from his disposable income $471 for a nonexistent car payment, then here, just as in *Lanning,* a mechanical calculation of "disposable income" would not accurately reflect his net "income to be received" during the plan period. *Id.* at 2474. And, because petitioner's disposable income in fact will be substantially higher, "the mechanical approach would deny creditors payments that the debtor could easily make." *Id.* at 2476. As in *Lanning*, there is no reason to believe that Congress intended such a "senseless result[ ]." *Id.* at 2475-2476.

III.

Petitioner is mistaken in contending that, unless he can deduct the transportation ownership expense, he will not be able to file a confirmable Chapter 13 plan. He asserts that he can afford only to pay the $504 per month in net income calculated on his Schedule J, rather than the $682 per month that would result from adding the $471 ownership expense to the net income calculated on his Form 22C. Even if this Court would review such a factbound question, that is not a reason to grant him a fictitious expense allowance; rather, petitioner must reduce his expenditures.

In any event, petitioner's schedules and form reflect sufficient disposable income to fund a confirmable plan. One reason petitioner's bottom line number for his net monthly income on Schedule J differs from his disposable income on his Form 22C is that petitioner answered identical questions differently. Had he answered them consistently, his Schedule J would have indicated that he has sufficient net income to repay more of his unsecured debts. Petitioner should not be permitted to retain an additional $471 for a car payment expense that he does not have.

ARGUMENT

The text of the Bankruptcy Code precludes debtors from deducting phantom car payments from current monthly income when calculating their disposable income available to pay creditors. That is the beginning and the end of the inquiry. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). Moreover, both the purpose and legislative history of the relevant Bankruptcy Code provisions confirm the plain meaning of the provision.

I. THE BANKRUPTCY CODE DOES NOT PERMIT PHANTOM TRANSPORTATION OWNERSHIP EXPENSES TO BE DEDUCTED WHEN CALCULATING DISPOSABLE INCOME

A. Under BAPCPA's Plain Text, A Debtor Is Not Entitled To A Deduction For Transportation Ownership Expenses When He Owes No Car Payment

BAPCPA allows an above-median debtor, such as petitioner, to withhold from unsecured creditors his reasonably necessary expenses, including "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards * * * for the area in which the debtor resides." 11 U.S.C. § 707(b)(2)(A)(ii)(I). As the court of appeals correctly held, under the plain and ordinary meaning of the word "applicable," when a debtor has no car payment, there is no transportation ownership expense amount specified in the IRS Standards that is "applicable" to that debtor. Accordingly, such a debtor cannot look to the IRS Standards to claim an ownership expense amount for transportation ownership.

1. *Under the ordinary meaning of "applicable," the transportation ownership expense amount is not applicable to a debtor who has no such expense*

It is a "fundamental canon of statutory construction" that "unless otherwise defined, words [of a statute] will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979); *see also Hamilton v. Lanning*, 130 S. Ct. 2464, 2471 (2010) ("When terms used in a statute are undefined, we give them their ordinary meaning." (quoting *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995))). This Court has often used dictionaries as a useful guide in determining a statutory term's plain and ordinary meaning. *See, e.g.*, *Smith v. United States*, 508 U.S. 223, 228-229 (1993); *Chapman v. United States*, 500 U.S. 453, 462 (1991).

"Applicable" means "capable of being applied," "having relevance," and "fit, suitable, or right to be applied." *Webster's Third New International Dictionary of the English Language Unabridged* 105 (1993); *see also Oxford English Dictionary* 575 (2d ed. (reprint with corrections) 1991) (defining "applicable" as "[c]apable of being applied or put to use"; "having reference to"). Indeed, the court below observed that, "'[a]pplicable,' in its ordinary sense, means 'capable of or suitable for being applied.'" Pet. App. 12 (quoting *Merriam-Webster's Collegiate Dictionary* 60 (11th ed. 2005)).

Where the debtor has no car payment, there is no relevant, suitable, or appropriate expense amount that is capable of being applied to the debtor. There is thus no "applicable" transportation ownership expense "under the National Standards and Local Standards." As the court of appeals put it: "An 'ownership cost' is not an 'expense'—either actual or applicable—if it does not exist, period." Pet. App. 11.

Petitioner's error is to start with the assumption that because he owns a vehicle, there must be some amount of ownership costs from the Standards that is "applicable" to him, and that it is simply a matter of selecting the amount based on his geographic region and number of cars owned. *See* Pet. Br. 51. But nothing in the text of the statute compels that conclusion. Indeed, such a reading would be contrary to the function of "applicable," which is to quantify "[a]mounts reasonably necessary to be expended" by the debtor that are thus not available for creditors. 11 U.S.C. § 1325(b)(3). Where the debtor owns his vehicle outright, in no sense is it reasonably necessary to expend money for car payments on that vehicle. Rather, as the courts below concluded, "what is important is the payments that debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors." Pet. App. 11 (quoting Pet. App. 31-32).

The conclusion that merely owning a car does not automatically entitle a debtor to an ownership expense deduction is buttressed by the fact that the

Standards distinguish "Ownership Costs" from "Operating Costs." App., *infra*, 2a. If petitioner's reading were correct, there would be no need for the Standards to provide separately for those different types of costs, because any car owner would be entitled to both. The statute, however, permits petitioner to deduct only the amounts under the Standards that are "applicable" to him. 11 U.S.C. § 707(b)(2)(A)(ii)(I). Under the plain meaning of that text, the operating costs are the only transportation costs applicable to him.

2. *The statute's use of both "applicable" and "actual" does not support petitioner's interpretation*

Petitioner emphasizes the fact that Section 707(b)(2)(A)(ii)(I) uses the term "applicable" expense amounts when referring to the National and Local Standards and "actual" expenses when referring to other expenses. Pet. Br. 24, 26, 36-38. Petitioner suggests that he therefore need not actually have any ownership expense for the Standards ownership expense amount to be applicable to him. That is incorrect.

At most, the use of those different words suggests that Congress meant for the terms to have different meanings. *See, e.g.*, *Russello v. United States*, 464 U.S. 16, 23 (1983). But requiring that a debtor in fact have a car payment for the transportation ownership expense to be "applicable" to him does not result in "actual" and "applicable" having the same meaning. Rather, the relevant expense amount is calculated differently depending on whether the statute calls for the "debtor's actual monthly expenses" or "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

Thus, the amount of the deduction for "applicable" expenses under the National and Local Standards often will not be the actual amount incurred by the debtor. For example, under the National Standards, which cover expenses such as food and clothing, the debtor is permitted the full amount of the applicable deduction listed in the table even if his actual expenses are lower, and he is limited to that amount even if his actual expenses are higher. *See* App., *infra*, 1a ("Taxpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent.").

By contrast, Congress used "actual" to refer to other expenses, including "the categories specified as Other Necessary Expenses" by the IRS, 11 U.S.C. § 707(b)(2)(A)(ii)(I), because there are no Standards amounts for such expenses. *See* App., *infra*, 21a-27a, § 5.15.1.10; *see also* Pet. Br. App. 22 ("The IRS does not set out specific dollar allowances for 'Other Necessary Expenses.'"). The allowable expense amount for such expenses is thus the actual amount of the debtor's expense. But Congress's use of "actual" expenses in those circumstances in no way suggests that it intended "applicable" expense amounts to include expenses that a debtor does not in fact incur at all.

3. The "[n]otwithstanding" clause does not aid petitioner

In support of his position that a debtor may take the Standards ownership deduction without in fact having a car payment, petitioner points to the following provision: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." 11 U.S.C. § 707(b)(2)(A)(ii)(I). Petitioner repeatedly invokes this provision, *see* Pet. Br. 27-28, 44-45, as if it provides that the calculation of monthly expenses by reference to the National and Local Standards must be performed without regard to whether the debtor in fact has such an expense.

But that does not follow: the fact that monthly expenses "shall not include any payments for debts" does not mean that they should include nonexistent expenses for which there are no payments of any kind. The "notwithstanding" clause is one of exclusion; it indicates payments that shall not be accounted for under clause (ii). It says nothing about what is *included* within the clause. And it certainly does not say that the absence of any payments whatsoever entitles a debtor to deduct the expense amounts in the Standards.

In any event, the Court need not decide how deductions should be calculated if a debtor is actually making car payments on a debt. When, as here, the debtor is not making secured car payments, car lease payments, or car payments of any kind, the ownership expense amount under the Standards is not applicable to the debtor.

B. The Statutory Text Incorporates The Collection Financial Standards, Which Confirm That A Debtor Has No "Applicable" Expense Amount When He Has No Car Payment

The plain meaning of the term "applicable" is bolstered by the statute's incorporation of the "National Standards and Local Standards" issued by the IRS. 11 U.S.C. § 707(b)(2)(A)(ii)(I).

1. The Collection Financial Standards are incorporated by the statute in their entirety

a. In petitioner's view, the Standards regarding transportation ownership consist exclusively of the table that provides amounts based on the number of cars. Pet. Br. 51. But the table itself does not specify whether the number of cars refers to the number of cars owned or the number of cars for which the debtor has ownership expenses (i.e., car payments). The header in the table itself is simply labeled "First Car" and "Second Car" without any further clarification. App., *infra*, 5a.

It therefore is not possible to follow the approach that petitioner urges—simply to look to the table alone, without also considering the accompanying instructions and guidelines. Indeed, the table alone, without some guidance as to how to read it, is meaningless.

b. The statute's reference to the IRS Standards is better read as referring to the IRS's Collection Financial Standards. The Collection Financial Standards are concise guidelines—separate from the Internal Revenue Manual—of which the tables are a part. *See* App., *infra*, 1a-4a. The Collection Financial Standards include guidelines that instruct how to use the tables and what the amounts listed in the tables mean. They plainly instruct: "If a taxpayer has no car payment, * * * only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." App., *infra*, 3a. Contrary to the claim of petitioner's amicus, at the time of BAPCPA's enactment, the IRS's Collection Financial Standards included that same statement. IRS, *Collection Financial Standards* (2005), http://web.archive.org/web/20050425003844/www.irs.gov/individuals/article/0,,id=96543,00.html.[4]

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[4] The appendix to the brief of Amicus Curiae National Association of Consumer Bankruptcy Attorneys includes only

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That Congress intended recourse to these instructions is bolstered by the language of the statute. Section 707(b)(2)(A)(ii)(I) provides that the applicable expense amounts are the "amounts specified *under* the National Standards and Local Standards," not the amounts specified "in" the standards. 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). In context, the use of the word "under" indicates that the tables are to be used in conjunction with the Collection Financial Standards as a whole, rather than blindly looking to the amounts listed "in" the tables. *See Ardestani v. INS*, 502 U.S. 129, 135 (1991) ("The word 'under' has many dictionary definitions and must draw its meaning from its context.").

Indeed, the current version of the tables for transportation expenses includes surrounding text that is essentially identical to the longstanding text of the Collection Financial Standards. Thus, on the IRS's website, the tables for transportation expenses are now accompanied by the following text: "[i]f a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense." IRS, *Local Standards: Transportation* (2010) ("2010 *Local Standards: Transportation*"), http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

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the transportation tables from 2005, not the entire 2005 Collection Financial Standards.

c. It makes no difference that the IRS does not normally have authority to issue regulations in the bankruptcy arena or that the IRS could amend the Standards at any time. Congress expressly incorporated the Standards when it enacted BAPCPA, without revoking the IRS's authority to continue making alterations. Indeed, Congress expressly recognized in BAPCPA the IRS's authority to amend them. *See* BAPCPA § 103(a), 119 Stat. at 25 ("It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.").

Moreover, contrary to petitioner's assertion, the IRS's "[d]isclaimer" that the "Collection Financial Standards are intended for use in calculating repayment of delinquent taxes," Pet. Br. 21 (quoting 2010 Collection Financial Standards) does not demonstrate that the IRS's guidance is not to be used in the disposable income calculation. It is the statute that governs, and the statute expressly provides that the debtor's monthly expenses "shall be" calculated by "the applicable monthly expense amounts specified under the National Standards and Local Standards * * * issued by the Internal Revenue Service." 11 U.S.C. § 707(b)(2)(A)(ii)(I). In any event, the IRS's website directs readers to the website of the U.S. Trustee Program for expense information for use in bankruptcy calculations. IRS, *Collection Financial Standards* (2010), http://www.irs.gov/individuals/article/

0,,id=96543,00.html. And that website, like the IRS's, provides that "[i]f a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense." U.S. Trustee Program, *Means Testing* (2010), *available at* http://www.justice.gov/ust/eo/bapcpa/20100315/meanstesting.htm (last updated May 21, 2010).

2. *The Internal Revenue Manual, relied on implicitly by the statute and expressly by the legislative history, confirms that a debtor without a car payment has no applicable ownership expense amount*

Although the Court need not look to the Internal Revenue Manual to resolve this case, the statute implicitly refers to it and approves of its use. The Manual confirms that the transportation ownership expense is not applicable in the absence of a car payment.

a. In the very same sentence referring to the National and Local Standards, Section 707(b)(2)(A)(ii) refers to "the categories specified as Other Necessary Expenses issued by the Internal Revenue Service." 11 U.S.C. § 707(b)(2)(A)(ii)(I). Those Other Expenses categories are found *only* within the Internal Revenue Manual, App., *infra*, 21a-27a, § 5.15.1.10, immediately after the Manual's discussion of the National and Local Standards, App., *infra*, 18a-20a, §§ 5.15.1.8 & 5.15.1.9.

And the legislative history is replete with references to the *Financial Analysis Handbook*, which is Chapter 15 of the Internal Revenue Manual. *See, e.g.*, H.R. Rep. No. 109-31, pt. 1, at 13-14 & nn.62-66; *id.* at 557 nn.85-87 (dissenting views); H.R. Rep. No. 107-3, pt. 1, at 9 (2001). For example, the House committee report accompanying S. 256, which was enacted into law as BAPCPA, explains that the "debtor's monthly expenses * * * must be the applicable monthly amounts set forth in the Internal Revenue Service *Financial Analysis Handbook* as Necessary Expenses under the National and Local Standards categories." H.R. Rep. No. 109-31, pt. 1, at 13-14 (italics added) (footnotes omitted); *see also* H.R. Rep. No. 107-3, pt. 1, at 9 (same).

And since before enactment of BAPCPA, the Internal Revenue Manual has provided that the applicable ownership expense amount for a debtor with no car payment is zero. "If the taxpayer has no car payment * * * [t]he taxpayer is only allowed the operating cost or the cost of [public] transportation." IRS, *Internal Revenue Manual* § 5.15.1.9 ¶ 1.B Note (2005) ("2005 *Internal Revenue Manual*"), http://web.archive.org/web/00505190114l0/http://www.irs.gov/irm/part5/ch14s01.html; *see also* App., *infra*, 3a (2006). Similarly, at the time of BAPCPA's enactment, the Internal Revenue Manual also stated: "If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense." 2005 *Internal*

Revenue Manual, supra, § 5.15.1.7 ¶ 4.B; *see also* App., *infra*, 16a, § 5.15.1.7 ¶ 4.B (2006).

b. Nevertheless, petitioner contends that the lack of any reference to the Internal Revenue Manual in the text of Section 707(b)(2)(A) indicates that Congress intended the National and Local Standards to be used in isolation, divorced from the Manual. Pet. Br. 48-49. In support, petitioner points out that earlier, unenacted bills expressly referred to the *Financial Analysis Handbook* in the Manual.

As an initial matter, little significance should be attached to the "unexplained disappearance" of those words from unenacted bills. *Mead Corp. v. Tilley*, 490 U.S. 714, 723 (1989). As this Court has explained, "'mute intermediate legislative maneuvers' are not reliable indicators of congressional intent." *Ibid.* (quoting *Trailmobile Co. v. Whirls*, 331 U.S. 40, 61 (1947)).

In any event, petitioner's argument fails to explain where the "Other Necessary Expenses" are to be found other than in the Internal Revenue Manual. Referring to the Manual in applying Section 707(b)(2)(A) is thus necessary, if implicit. And that is confirmed by the committee report's repeated citation to and quotation of the Internal Revenue Manual's guidelines when discussing how the Local and National Standards were to be implemented.

3. *Car payments are the only "ownership costs" under the Standards*

Despite that he has no car payment of any kind, petitioner nevertheless contends that a transportation ownership deduction is applicable to him because "there are vehicle ownership costs in addition to debt payments." Pet. Br. 51. In particular, petitioner asserts that he pays (or could pay) insurance, licensing fees, and taxes; that the car will depreciate in value; and that he will someday have to pay to replace the car. Pet. Br. 52. But none of these is a vehicle ownership cost. Some are addressed under other provisions of the Standards, and some are not "expenses" at all.

a. Under the Standards, insurance and licensing fees are vehicle operating costs, not ownership costs. The Collection Financial Standards provide that "ownership costs" represent "nationwide figures for monthly loan or lease payments." App., *infra*, 2a; App., *infra*, 3a (noting that the Standards were revised on February 1, 2006, to "base automobile ownership/leasing costs on the five-year average of new and used car financing data compiled by the Federal Reserve Board of Governors"). Indeed, the current Local Standards for Transportation expressly provide that "operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls." 2010 *Local Standards: Transportation*, *supra*.

The Internal Revenue Manual confirms this distinction between ownership and operating costs. When petitioner filed his bankruptcy petition, the Internal Revenue Manual identified the costs included in transportation as "[v]ehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver's license, public transportation." App., *infra*, 20a, § 5.15.1.9 ¶ 1.B. The Internal Revenue Manual consistently has explained—at the time Congress enacted BAPCPA, at the time petitioner filed his petition, and today—that only the "figures for loan or lease payments" were "referred to as ownership cost" and that "operating cost" captures the remainder of vehicle-related expenses. App., *infra*, 16a, § 5.15.1.7 ¶ 4.B; *see also* 2005 *Internal Revenue Manual*, *supra*, § 5.15.1.7 ¶ 4.B; IRS, *Internal Revenue Manual* § 5.15.1.7 ¶ 4.B (2010), http://www.irs.gov/irm/part5/irm_05-015-001.html.

b. Taxes are neither ownership costs nor operating costs. The Collection Financial Standards for transportation states that it "[d]oes not include personal property taxes." App., *infra*, 6a. Rather, as the Internal Revenue Manual explains, taxes are included in the "Other Expenses" category, for which there are no standard amounts because the actual expense amounts may be deducted so long as deemed necessary. *See* App., *infra*, 27a, § 5.15.1.10.

c. Depreciation is not a cost. Rather, depreciation is a decline in the value of the debtor's car. *See*

Black's Law Dictionary 473 (8th ed. 2004) (depreciation is a "decline in an asset's value because of use, wear, or obsolescence"). Depreciation affects only the book value (i.e., resale value) of the car; it results in no out-of-pocket expense for the debtor, nor does it diminish the disposable income that the debtor has available to repay his creditors. Chapter 13 is concerned only with out-of-pocket costs and ignores non-cash costs such as depreciation; nothing in BAPCPA indicates that Congress intended to depart from that approach. *In re Coffin*, 396 B.R. 804, 809 (Bankr. D. Me. 2008) ("Chapter 13 budgeting traditionally takes no account of such non-cash 'costs.' * * * BAPCPA did not alter confirmation standards so fundamentally (and so adversely to creditors' interests) that they *must* now be taken into account."), appeal pending, No. 08-90 (B.A.P. 1st Cir.); *see also Babin v. Wilson (In re Wilson)*, 383 B.R. 729, 734 (B.A.P. 8th Cir. 2008) ("it is only the *payments* that affect the debtor's ability to repay his creditors").

d. Petitioner argues that "[r]eplacement costs" are applicable ownership costs, contending that "the ownership cost deduction takes into account the expenses incurred by debtors to replace their vehicles." Pet. Br. 52.[6] That argument is flawed for at least two reasons.

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[6] This argument also has been proposed by treatises and commentators on which petitioner relies. *See* Pet. Br. 39 (quoting Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231, 257-258 (2005); 6 *Collier on Bankruptcy*,

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First, petitioner points to nothing indicating congressional concern that debtors with a paid-off vehicle be able to purchase a new one during their Chapter 13 plan commitment period. *See In re Devilliers*, 358 B.R. 849, 864 (Bankr. E.D. La. 2007) ("The deduction is not * * * an invitation for a debtor to 'save' for the ultimate replacement of an existing vehicle."). Rather, Congress's primary concern was ensuring that existing unsecured debts be paid down as much as the debtor can afford. *See* pp. 1-3, *supra*; pp. 42-43, *infra*.

Second, if the need for a new car arises, the debtor may move to modify the plan to reduce the plan payments to permit purchase of a new vehicle. 11 U.S.C. § 1329; *In re Cole*, 371 B.R. 454, 459 (Bankr. W.D. Wash. 2007) ("A debtor with an older car who is in * * * Chapter 13 retains the ability to move for plan modification to fund the purchase of a new car if needed."); *see also* David Gray Carlson, *Modified Plans of Reorganization and the Basic Chapter 13 Bargain*, 83 AM. BANKR. L.J. 585, 640 (2009) ("Perhaps the most common motive for modification concerns car trouble after confirmation.").

¶ 707.05(2)(c)(i)). But to the extent that such commentary conflicts with the statute, the statute prevails. *Schwab v. Reilly*, 130 S. Ct. 2652, 2660 n.5 (2010) ("treatise excerpts[ ] and policy considerations * * * must be read in light of the Bankruptcy Code provisions that govern this case, and must yield to those provisions in the event of conflict").

C. Permitting A Debtor To Reduce His Disposable Income Amount Based On A Nonexistent Transportation Ownership Expense Would Contravene BAPCPA's Central Purpose

Petitioner's interpretation would contravene Congress's primary purpose in enacting BAPCPA: to prevent abuse by ensuring that debtors repay as much as they can afford to their creditors. And it would transform intended caps on applicable expenses into minimums. Petitioner's interpretation thus should be rejected.

1. Permitting deductions for phantom car payments would defeat the congressional purpose of having debtors repay as much debt as they can afford

Congress's central objective in enacting BAPCPA was to ensure that debtors who can repay some of their unsecured debts actually do repay as much as they can afford before receiving a discharge. H.R. Rep. No. 109-31, pt. 1, at 2 ("The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism * * *, which is intended to ensure that debtors repay creditors the maximum they can afford."); *see also* Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231 (2005). As the act's title—Bankruptcy Abuse Prevention and Consumer Protection Act—demonstrates, Congress perceived the pre-BAPCPA bankruptcy system as permitting excessive abuse. This abuse stemmed from "the fact that some bankruptcy debtors [were] able to repay a significant portion of their debts," but instead were filing for Chapter 7 relief. H.R. Rep. No. 109-31, pt. 1, at 5. Congress acted to "restor[e] personal responsibility and integrity in the bankruptcy system and ensure that the system is fair for both debtors and creditors." H.R. Rep. No. 109-31, pt. 1, at 2. Thus, as petitioner acknowledges, "BAPCPA seeks to have debtors pay the full sum they are capable of paying toward their unsecured debt." Pet. Br. 57.

Petitioner's interpretation of "applicable" would contravene that central purpose. Petitioner's approach would deny unsecured creditors $28,260 ($471 per month over 60 months), even though that money is not necessary for the debtor's maintenance and support. *See Hamilton*, 130 S. Ct. at 2475-2476 (rejecting interpretation that "would produce senseless results that we do not think Congress intended" by "deny[ing] creditors payments that the debtor could easily make"); *see also* Pet. Br. 60 ("This unfortunate result—denying creditors payments that the debtor is capable of making—is hardly the objective of the BAPCPA legislation."). BAPCPA does protect debtors' ability to continue to own vehicles that they need for transportation. But when the debtor already owns the car outright, and therefore has no car payments, it makes no sense to permit the debtor to retain for himself vehicle ownership expenses. As the court of appeals observed: "Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor." Pet. App. 11.

Petitioner argues that the court of appeals' interpretation would defeat Congress's intent by favoring secured debt and "amount[ing] to an incentive to retain secured debt as a way to lower disposable income in bankruptcy." Pet. Br. 55-56. But secured debt virtually always takes precedence over unsecured debt. 4 *Collier on Bankruptcy* ¶ 506.02. And, in appropriate circumstances, the requirement that a Chapter 13 plan be proposed in good faith will provide courts authority to police such schemes. *See* 11 U.S.C. § 1325(a)(3).

Moreover, permitting phantom car payments to be deducted from monthly income in the disposable-income calculation would give debtors perverse incentives. Under petitioner's theory, a debtor could spend a few hundred dollars on a junkyard car immediately before filing a petition, and then reap an additional $471 per month during the Chapter 13 plan (or even possibly pass the means test to be eligible for Chapter 7 relief). *See Fokkena v. Hartwick*, 373 B.R. 645, 652 (Bankr. D. Minn. 2007) ("debtors who own two unusable cars rusting in their back yard would be entitled to the windfall benefit of both ownership and operating expense deductions although they, in fact, incur no expenses by owning the vehicles"); *In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007) ("Allowing debtors to deduct from their disposable income a fictional ownership allowance would give debtors with unencumbered vehicles a windfall at the expense of their unsecured creditors."). While these efforts, if detected, would reflect the absence of good faith that is necessary to propose a confirmable plan, *see* 11 U.S.C. § 1325(a)(3), such conduct is not always detected.

The court of appeals' interpretation avoids this result. And it does not create the anomalies that have been ascribed to it. Some courts and commentators have criticized the supposed anomaly of forbidding a deduction for phantom car payments to debtors who own their cars outright, while allowing a deduction over 60 months for debtors who have only a few car payments remaining. *See, e.g.*, *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148, 1161 (7th Cir. 2008); Wedoff, 79 AM. BANKR. L.J. at 258. That criticism is unfounded after *Hamilton v. Lanning*. The scheduled ending of car payments during the plan's commitment period would be a "change[] in the debtor's * * * expenses that [is] known or virtually certain at the time of confirmation." *Hamilton*, 130 S. Ct. at 2478. As such, the bankruptcy court may take that into account in calculating projected disposable income. *Ibid.*

2. *Petitioner's interpretation would turn intended maximums into minimums*

Petitioner's interpretation of Section 707(b)(2)(A)(ii) would turn the Local Standards on their head. At the time of BAPCPA's enactment and since, the IRS has viewed the Local Standards as caps on a taxpayer's actual expenses: "the taxpayer is allowed the amount actually spent or the standard, whichever is less." App., *infra*, 1a. But petitioner would turn those ceilings on expenses into floors. Under petitioner's interpretation, a debtor with a car would be permitted to deduct *at least* $471 in monthly expenses, even if he has no car payment at all or if his car payment is much smaller. This is because, under petitioner's view, every debtor with a car may deduct the full ownership expense under Section 707(b)(2)(A)(ii)(I). Petitioner cites no reason to believe that when Congress incorporated the Local Standards into the Bankruptcy Code, it intended to transform them from maximums to minimums.

Worse still, these minimums would be available only to above-median debtors, because the statutory disposable-income calculation applies only to them. Below-median debtors would continue to be restricted to deducting the reasonably necessary amounts they in fact incur. 11 U.S.C. § 1325(b)(2). Such a result would be at odds with Congress's purpose.

D. The Official Bankruptcy Forms Do Not Take A View On Which Standards Are "Applicable" To A Person Who Has No Transportation Ownership Expense, And Even If They Did, They Are Not Binding

Petitioner asserts that Official Bankruptcy Form 22C instructed him to deduct the Local Standards transportation ownership amount from his current monthly income and that under Rule 1007(b)(6) of the Federal Rules of Bankruptcy Procedure, he had "no discretion" to deviate from that form. Pet. Br. 34.

That argument is wrong for two reasons. First, Form 22C did not require petitioner to claim an ownership expense for the car he owns free and clear. Rather, the form instructed him: "Check the number of vehicles for which you *claim* an ownership/lease expense." J.A. 49 (emphasis added). It was petitioner's choice, not the form's instruction, to claim an ownership expense for his car even though he had no such expense. Indeed, the Advisory Committee Notes to the forms now expressly state that "[t]he forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance." Report of Advisory Committee on the Rules of Bankruptcy Procedure, *2005-2008 Committee Note, Forms 22A, 22B, & 22C* at 12 (Jan. 2008), http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_1208/B_22_CN_cum120108.pdf.[6]

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[6] The Committee Notes included in the Appendix to petitioner's brief (Pet. Br. App. 16-31) do not include this comment because they are the 2005 notes from the Committee's original promulgation of interim forms. *See* Pet. Br. App. 14-15 (describing interim Official Forms and comments adopted in October 2005). In 2007, in response to public comments on the forms as well as developing case law, the Advisory Committee amended the notes to clarify that the forms are silent as to whether a transportation ownership expense amount may be claimed in

(Continued on following page)

Second, even if the forms did support petitioner's interpretation, they would conflict with the Bankruptcy Code and thus be invalid. To the extent that the forms are inconsistent with substantive provisions of the bankruptcy statutes, they have no force. *See Schwab v. Reilly*, 130 S. Ct. 2652, 2660 n.5 (2010) (bankruptcy "forms [and] rules * * * must be read in light of the Bankruptcy Code provisions that govern this case, and must yield to those provisions in the event of conflict"); *see also* 28 U.S.C. § 2072(b) (rules prescribing forms of pleadings in bankruptcy cases "shall not abridge, enlarge, or modify any substantive right").

Indeed, in a congressional hearing following promulgation of the draft forms, but before the Advisory Committee Note was added, Senator Charles Grassley, a member of the Senate subcommittee charged with oversight of the implementation of BAPCPA, expressed concern on this very point. The Senator observed: "[T]he federal courts produced a bankruptcy form that is supposed to measure repayment ability. But it's my understanding that this form actually directs consumers to claim deductions for expenses a debtor may not even have. That

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the absence of an actual ownership expense. *See* Report of Advisory Committee on Bankruptcy Rules, *2005-2007 Committee Note, Forms 22A, 22B, & 22C* at 4 (May 2007), *available at* p. 319 of http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/ST09-2007.pdf.

certainly wasn't the intent of the law. The form legitimizes gaming of the law, reduces the integrity of the system, and ultimately undermines the reforms we were trying to accomplish." *Oversight of the Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the S. Comm. on the Judiciary*, 109th Cong. 126 (2006) (statement of Sen. Charles Grassley).

II. IN THE ALTERNATIVE, PHANTOM TRANSPORTATION OWNERSHIP EXPENSES SHOULD NOT BE COUNTED WHEN PROJECTING FUTURE DISPOSABLE INCOME

Even if this Court were to hold that debtors with no car payment may nevertheless deduct from "disposable income" the transportation ownership expense amount from the Standards, the judgment below should be affirmed. Under this Court's decision in *Hamilton v. Lanning*, calculating "disposable income" does not resolve the separate question of what constitutes a debtor's "*projected* disposable income." And it is projected disposable income, as of the date on which the plan is confirmed, that is to be paid to unsecured creditors during the applicable commitment period. 11 U.S.C. § 1325(b)(1)(B).[7]

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[7] This argument falls within the scope of the question presented, which addresses "calculating the debtor's 'projected disposable income,'" not just a debtor's "disposable income."

(Continued on following page)

In *Hamilton v. Lanning*, this Court adopted the "forward-looking approach" to determining projected disposable income, in which a court may "take into account other known or virtually certain information about the debtor's future income or expenses." 130 S. Ct. at 2475. Under that approach, the certain fact that petitioner will not actually be paying any vehicle ownership expense should be taken into account.

If petitioner is allowed to deduct from his disposable income $471 for a nonexistent car payment, then here, just as in *Lanning*, a mechanical calculation of "disposable income" would not accurately reflect his net "income to be received" during the plan period. *Id.* at 2474. And, because petitioner's disposable income in fact will be substantially higher, "the mechanical approach would deny creditors payments that the debtor could easily make." *Id.* at 2476. As in *Lanning*, there is no reason to believe that Congress intended such a "senseless result[ ]." *Id.* at 2475-2476.

To be sure, in *Lanning*, the debtor's income had changed between the look-back period used to calculate her "disposable income" and the time she filed for bankruptcy. *Id.* at 2470. But, contrary to petitioner's

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Pet. i. In the court of appeals, respondent contended that the term "projected" was relevant to the correct resolution of the question, Resp. C.A. Br. 12-13; in this Court, respondent raised this argument as an alternative ground in its brief in opposition, Br. in Opp. 3-4. And petitioner has briefed the issue. Pet. Br. 57-61.

claim, Pet. Br. 58, that is a distinction without a difference. The important point is that "projected" disposable income should attempt to accurately reflect, on a forward-looking basis, the net income available during the plan period. Here, it is "known or virtually certain" that petitioner will have no car payment going forward.

Accordingly, even if the ownership amount in the Standards is deemed applicable to petitioner, that amount should be excluded from his "projected disposable income," and the judgment should be affirmed on that alternative ground.

III. PETITIONER IS MISTAKEN IN CLAIMING THAT HE CANNOT SUBMIT A CONFIRMABLE CHAPTER 13 PLAN BECAUSE HE LACKS SUFFICIENT INCOME TO PAY ALL OF HIS DISPOSABLE INCOME TO CREDITORS

Petitioner suggests that the court of appeals' interpretation would contravene Congress's objectives because it would preclude him from filing a confirmable Chapter 13 plan and would therefore result in fewer payments to unsecured creditors. Pet. Br. 56. In particular, based on his Schedules I and J, he claims that he has only $504.15 net monthly income available to pay creditors. He therefore claims that he cannot pay $681.55—the total amount of his disposable income on Form 22C when the transportation vehicle ownership expense amount is not deducted.

This Court did not grant review to consider such a fact-specific inquiry. Even if the Court were to review it, the answer is not to grant petitioner a fictitious expense deduction that will artificially reduce his disposable income, but rather for petitioner to reduce his expenditures.

In any event, petitioner's schedules and form reflect sufficient disposable income to fund a confirmable plan. One reason petitioner's bottom line number for his net monthly income on Schedule J differs from his disposable income on his Form 22C is that petitioner answered identical questions differently. If all the discrepancies were corrected to bring his Schedules I and J into alignment with his Form 22C, petitioner's Schedules I and J would have shown an additional $492.06 in net income,[8] for a total of $996.21 in net monthly income.

When that amount is adjusted to take into account the expense amounts petitioner is allowed under the National and Local Standards that are not at issue in this case, petitioner is entitled to retain $264.66 more per month than his real expenses reflected in his Schedules I and J.[9] Subtracting that amount (and $50.00 for administrative expenses related to the bankruptcy, J.A. 53 (line 50)) from his net monthly income of $996.21 brings petitioner's disposable income to $681.55.

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[8] Petitioner claimed to make $115.90 less per month on Schedule I than he did on Form 22C. J.A. 43 (line 3), 45 (line 2). He claimed to spend $247.50 a month on a 401(k) and $20.00 on stock purchases on Schedule I, but did not make a similar claim on his Form 22C. J.A. 43 (line 4d), 53 (line 55). And he claimed to spend $150.00 more a month for health insurance on Schedules I and J than he did on his Form 22C. J.A. 43 (line 4b), 44 (line 11c), 51 (line 39). By contrast, he claimed to pay $41.34 less per month in taxes on Schedule I than on Form 22C. J.A. 43 (line 4a), 50 (line 30). That totals to $492.06 more net income than petitioner reported on his Form 22C—$533.40 in additional actual income and lower actual expenses listed on Form 22C minus $41.34 in higher actual expenses listed on Form 22C.

That is the amount respondent claims petitioner should have been making available to his unsecured creditors. Petitioner should not be able to deduct $471.00 from that amount for a car payment expense that he does not have.

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[9] Petitioner claimed $425.00 a month in food, clothing, household supplies, personal care and miscellaneous on Schedule J, but on Form 22C he was entitled to deduct, due to the Standards, an expense of $703.00 a month for those categories. J.A. 44 (lines 4, 5, 6, 7, and 9); U.S. Trustee Program, *IRS National Standards for Allowable Living Expenses* (Feb. 13, 2006 to Sept. 30, 2006), http://www.justice.gov/ust/eo/bapcpa/20060213/bci_data/national_expense_standards.htm. Likewise he identified for the transportation *operating* cost $263.86 a month, but was entitled to deduct $338.00 a month. J.A. 44 (lines 8 and 11d); Pet. Br. App. 7. On the other hand, petitioner identified $380.48 in housing and utilities (other than the mortgage payment itself), yet the Standards permitted him to deduct only $293.00. J.A. 44 (lines 2, 3, and 11a); U.S. Trustee Program, ***Bankruptcy Allowable Living Expenses, Local Housing & Utilities Standards***, (Feb. 13, 2006 to Sept. 30, 2006), http://www.justice.gov/ust/eo/bapcpa/20060213/bci_data/housing_charts/irs_housing_charts_NV.htm.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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August 6, 2010

Collection Financial Standards (2006)

APPENDIX A

[LOGO] Internal Revenue Service
United States Department of the Treasury

Collection Financial Standards

General

Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability.

Allowances for food, clothing and other items, known as the National Standards, apply nationwide except for Alaska and Hawaii, which have their own tables. Taxpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent.

Maximum allowances for housing and utilities and transportation, known as the Local Standards, vary by location. Unlike the National Standards, the taxpayer is allowed the amount actually spent or the standard, whichever is less.

Food, Clothing and Other Items

National Standards for reasonable amounts have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous.

All standards except miscellaneous are derived from the Bureau of Labor Statistics (BLS) Consumer

Expenditure Survey (CES). The miscellaneous standard has been established by the IRS.

Alaska and Hawaii

Due to their unique geographic circumstances and higher cost of living, separate standards for food, clothing and other items have been established for Alaska and Hawaii.

Housing and Utilities

The housing and utilities standards are derived from Census and BLS data, and are provided by state down to the county level.

Transportation

The transportation standards consist of nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA). Public transportation is included under operating costs. A conversion chart has been provided with the standards which shows which IRS districts fall under each Census Region, as well as the counties included in each MSA. The ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards.

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. The operating costs are derived from BLS data.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense.

Recent Revisions

The Local Standards for housing and utilities and transportation were revised on 02/01/06 to:

- add family size to the housing and utilities allowances (two or less, three, and four or more);
- base automobile ownership/leasing costs on the five-year average of new and used car financing data compiled by the Federal Reserve Board of Governors; and,
- reflect updated information from the Bureau of Labor Statistics.
- Housing and Utility Standards have been established in 2006 for U.S. Territories

The revised Local Standards for housing and utilities and transportation are effective for financial analysis conducted on or after January 1, 2006.

Allowable Living Expenses for Transportation
(2006)

APPENDIX B

[LOGO – Internal Revenue Service
United States - Department of the Treasury

Allowable Living Expenses for Transportation

***Disclaimer**: IRS Allowable Expenses are intended for use in calculating repayment of delinquent taxes. Expense information for use in bankruptcy calculations can be found on the website for the U.S. Trustee Program.*

Collection Financial Standards
Financial Analysis – Local Standards: Transportation*

Ownership Costs

	First Car	Second Car
National	$471	$332

Operating Costs & Public Transportation Costs

Region	No Car	One Car	Two Cars
Northeast Region	$238	$311	$393
Boston	$267	$300	$382
New York	$313	$402	$484
Philadelphia	$245	$304	$386
Pittsburgh	$167	$274	$357
Midwest Region	$199	$275	$358
Chicago	$264	$327	$410
Cincinnati	$227	$260	$343
Cleveland	$204	$280	$362
Detroit	$320	$390	$473

Kansas City	$252	$296	$379
Milwaukee	$214	$254	$336
Minneapolis – St. Paul	$284	$333	$416
St. Louis	$207	$264	$346
South Region	$203	$260	$343
Atlanta	$291	$238	$320
Baltimore	$233	$271	$353
Dallas – Ft. Worth	$317	$348	$430
Houston	$287	$338	$420
Miami	$292	$348	$431
Tampa	$264	$253	$336
Washington, D.C.	$299	$350	$433
West Region	$252	$338	$420
Anchorage	$319	$341	$423
Denver	$312	$338	$420
Honolulu	$300	$328	$410
Los Angeles	$284	$426	$508
Phoenix	$275	$351	$433
Portland	$194	$297	$379
San Diego	$322	$382	$464
San Francisco	$325	$401	$484
Seattle	$267	$329	$412

* Does not include personal property taxes. (effective February 1, 2006)

For Use with Allowable Transportation Expenses Table

The Operating Costs and Public Transportation Costs sections of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area

(MSA). The following table lists the states that comprise each Census Region. Once the taxpayer's Census Region has been ascertained, to determine if an MSA standard is applicable, use the definitions below to see if the taxpayer lives within an MSA (MSAs are defined by county and city, where applicable). If the taxpayer does not reside in an MSA, use the regional standard.

Northeast Census Region

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey		
MSA	**COUNTIES**	
New York	*in NY:*	Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester
	in NJ:	Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren
	in CT:	Fairfield, Litchfield, Middlesex, New Haven
	in PA:	Pike

Philadelphia	*in PA:*	Bucks, Chester, Delaware, Montgomery, Philadelphia
	in NJ:	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem
	in DE:	New Castle
	in MD:	Cecil
Boston	*in MA:*	Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth, Suffolk, Worcester
	in NH:	Hillsborough, Merrimack, Rockingham, Strafford
	in CT:	Windham
	in ME:	York
Pittsburgh	*in PA:*	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

Midwest Census Region

North Dakota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota, Iowa

MSA	**COUNTIES (unless otherwise specified)**	
Chicago	*in IL:*	Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, Will
	in IN:	Lake, Porter

	in WI:	Kenosha
Detroit	*in MI:*	Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne
Milwaukee	*in WI:*	Milwaukee, Ozaukee, Racine, Washington, Waukesha
Minneapolis-St. Paul	*in MN:*	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
	in WI:	Pierce, St. Croix
Cleveland	*in OH:*	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit
Cincinnati	*in OH:*	Brown, Butler, Clermont, Hamilton, Warren
	in KY:	Boone, Campbell, Gallatin, Grant, Kenton, Pendleton
	in IN:	Dearborn, Ohio
St. Louis	*in MO:*	Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
	in IL:	Clinton, Jersey, Madison, Monroe, St. Clair
Kansas City	*in MO:*	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
	in KS:	Johnson, Leavenworth, Miami, Wyandotte

South Census Region

<table>
<tr><td colspan="3">Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Virginia, Maryland, District of Columbia, Delaware, North Carolina, South Carolina, Georgia, Florida, Alabama</td></tr>
<tr><td>MSA</td><td colspan="2">COUNTIES (unless otherwise specified)</td></tr>
<tr><td rowspan="4">Washington, D.C.</td><td><i>in DC:</i></td><td>District of Columbia</td></tr>
<tr><td><i>in MD:</i></td><td>Calvert, Charles, Frederick, Montgomery, Prince George's, Washington</td></tr>
<tr><td><i>in VA:</i></td><td>Arlington, Clarke, Culpepper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city</td></tr>
<tr><td><i>in WV:</i></td><td>Berkeley, Jefferson</td></tr>
<tr><td>Baltimore</td><td><i>in MD:</i></td><td>Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city</td></tr>
<tr><td>Atlanta</td><td><i>in GA:</i></td><td>Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton</td></tr>
</table>

Miami	*in FL:*	Broward, Miami-Dade
Tampa	*in FL:*	Hernando, Hillsborough, Pasco, Pinellas
Dallas-Ft. Worth	*in TX:*	Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant
Houston	*in TX:*	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller

West Census Region:

New Mexico, Arizona, Colorado, Wyoming, Montana, Nevada, Utah, Washington, Oregon, Idaho, California, Alaska, Hawaii		
MSA	**COUNTIES (unless otherwise specified)**	
Los Angeles	*in CA:*	Los Angeles, Orange, Riverside, San Bernadino, Ventura
San Francisco	*in CA:*	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
San Diego	*in CA:*	San Diego
Portland	*in OR:*	Clackamas, Columbia, Marion, Multnomah, Polk, Washington, Yamhill
	in WA:	Clark

Seattle	*in WA:*	Island, King, Kitsap, Pierce, Snohomish, Thurston
Honolulu	*in HI:*	Honolulu
Anchorage	*in AK:*	Anchorage borough
Phoenix	*in AZ:*	Maricopa, Pinal
Denver	*in CO:*	Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, Weld

* * *

Internal Revenue Manual (2006) (Excerpts)

APPENDIX C

[LOGO] Internal Revenue Service
United States Department of the Treasury

Part 5. Collecting Process

Chapter 15. Financial Analysis

Section 1. Financial Analysis Handbook

5.15.1 Financial Analysis Handbook

- 5.15.1.1 Expectations
- 5.15.1.2 Analyzing Financial Information
- 5.15.1.3 Verifying Financial Information
- 5.15.1.4 Shared Expenses
- 5.15.1.5 Internal Sources
- 5.15.1.6 External Sources
- 5.15.1.7 Allowable Expense Overview
- 5.15.1.8 National Standards
- 5.15.1.9 Local Standards
- 5.15.1.10 Other Expenses
- 5.15.1.11 Determining Individual Income
- 5.15.1.12 Business Entities
- 5.15.1.13 Business Expenses
- 5.15.1.14 Determining Business Income
- 5.15.1.15 Assets
- 5.15.1.16 Determining Equity in Assets
- 5.15.1.17 Jointly Held Assets
- 5.15.1.18 Income-Producing Assets
- 5.15.1.19 Assets Field By Others as Transferees, Nominees or Alter Egos
- 5.15.1.20 Cash
- 5.15.1.21 Securities
- 5.15.1.22 Life Insurance

- 5.15.1.23 Retirement or Profit Sharing Plans
- 5.15.1.24 Furniture, Fixtures, and Personal Effects
- 5.15.1.25 Motor Vehicles, Aircraft and Vessels
- 5.15.1.26 Real Estate
- 5.15.1.27 Mortgage and Real Estate Loans
- 5.15.1.28 Accounts and Notes Receivable
- 5.15.1.29 Inventory
- 5.15.1.30 Machinery and Equipment
- 5.15.1.31 Tax-Exempt Securities
- 5.15.1.32 Loans to Shareholders
- 5.15.1.33 Intangible Assets
- 5.15.1.34 Cash Flow Analysis
- 5.15.1.35 Making the Collection Decision
- 5.15.1.36 Business Entity and Collection
- Exhibit 5.15.1-1 Questions and Answers to Assist in Financial Analysis (Reference: 5.15.1.3)
- Exhibit 5.15.1-2 Financial Analysis: On-Line Access to the Allowable Expense Tables (Reference 5.15.1)

* * *

5.15.1.7 (05-01-2004)
Allowable Expense Overview

1. Allowable expenses include those expenses that meet the necessary expense test. *The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income.* The expenses

must be reasonable. The total necessary expenses establish the minimum a taxpayer and family needs to live.

2. There are three types of necessary expenses:
   - National Standards
   - Local Standards
   - Other Expenses

3. National Standards: These establish standards for reasonable amounts for five necessary expenses. Four of them come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey: food, housekeeping supplies, apparel and services, and personal care products and services. The fifth category, miscellaneous, is a discretionary amount established by the Service. It is $100 for one person and $25 for each additional person in the taxpayer's household.

   Note:

   All five standards are included in one total national standard expense.

4. Local Standards: These establish standards for two necessary expenses: housing and transportation. Taxpayers will be allowed the local standard or the amount actually paid, whichever is less.

   A. Housing – Standards are established for each county within a state. When deciding if a deviation is appropriate, consider the cost of moving to a new residence; the increased cost of transportation to work and school that will result from moving to lower-cost housing and the tax consequences. The tax consequence is the difference between the benefit the taxpayer currently derives from the interest and property tax deductions on Schedule A to the benefit the taxpayer would derive without the same or adjusted expense.

B. Transportation – The transportation standards consist of nationwide figures for loan or lease payments referred to as ownership cost, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs were derived from BLS data. If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense. Under ownership costs, separate caps are provided for the first car and second car. If the taxpayer does not own a car a standard public transportation amount is allowed.

5. Other – Other expenses may be allowed if they meet the necessary expense test. The

amount allowed must be reasonable considering the taxpayer's individual facts and circumstances.

6. Conditional expenses. These expenses do not meet the necessary expenses test. However, they are allowable if the tax liability, including projected accruals, can be fully paid within five years.

7. National local [sic] expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

8. Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. Verify exemptions claimed on taxpayer's income tax return meet the dependency requirements of the IRC. There may be reasonable exceptions. Fully document the reasons for any exceptions. For example, foster children or children for whom adoption is pending.

9. A deviation from the local standard is not allowed merely because it is inconvenient for the taxpayer to dispose of valued assets.

10. Revenue officers should consider the length of the payments. Although it may be appropriate to allow for payments made on the

secured debts that meet the necessary expense test, if the debt will be fully repaid in one year only allow those payments for one year.

5.15.1.8 (05-01-2004)
National Standards

1. National standards include the following expenses:

   A. Apparel and services. Includes shoes and clothing, laundry and dry cleaning, and shoe repair.

   B. Food. Includes all meals, home and away.

   C. Housekeeping supplies. Includes laundry and cleaning supplies; other household products such as cleaning and toilet tissue, paper towels and napkins; lawn and garden supplies; postage and stationary; and other miscellaneous household supplies.

   D. Personal care products and services. Includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances.

E. Miscellaneous. A discretionary allowance of $100 for one person and $25 for each additional person in a taxpayer's family.

2. Allow taxpayers the total national standard amount for their income level.

   Example: *The taxpayer's expenses are: housekeeping supplies – $150, clothing – $150, food – $600, miscellaneous – $400 (Total Expenses – $1,300). The taxpayer is allowed the national standard of $1,100.*

3. A taxpayer that claims more than the total allowed by the national standards must substantiate and justify each separate expense of the total national standard amounts.

   Example: *A taxpayer may claim a higher food expense than allowed. Justification would be based on prescribed or required dietary needs.*

5.15.1.9 (05-01-2004)
Local Standards

1. Local standards include the following expenses:

   A. Housing and Utilities. The utilities include gas, electricity, water, fuel, oil, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone. Housing expenses include: mortgage or rent, property taxes, interest, parking, necessary maintenance and repair, homeowner's or renter's insurance, homeowner dues and condominium fees. Usually, this is considered necessary only for the place of residence. Any other housing expenses should be allowed only if, based on a taxpayer's individual facts and circumstances, disallowance will cause the taxpayer economic hardship.

B. Transportation. Vehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required inspection, parking fees, tolls, driver's license, public transportation. Transportation costs not required to produce income or ensure the health and welfare of the family are not considered necessary. Consider availability of public transportation if car payments (purchase or lease) will prevent the tax liability from being paid in part or full. Public transportation costs could be an option if it does not significantly increase commuting time and inconvenience the taxpayer.

Note:

If the taxpayer has no car payment, or no car, question how the taxpayer travels to and from work, grocer, medical care, etc. The taxpayer is only allowed the operating cost or the cost of transportation.

5.15.1.10 (05-01-2004)
Other Expenses

1. Other expenses may be considered if they meet the necessary expense test – they must provide for the health and welfare of the taxpayer and/or his or her family or they must be for the production of income. This is determined based on the facts and circumstances of each case.

2. If other expenses are determined to be necessary and, therefore allowable, document the reasons for the decision in your history.

3. The amount allowed for necessary or conditional expenses depends on the taxpayer's ability to full pay the liability within five years and on the taxpayer's individual facts and circumstances. If the liability can be paid within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses. If the taxpayer cannot pay within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses for up to one year in order to modify or eliminate the expense. *(See IRM 5.14, Installment Agreements)*

Expense Item	Expense is Necessary if:	Notes/Tips
Accounting and legal fees.	Representation before the Service is needed or meets the necessary expense tests.	Disallow any other accounting or legal fees. Disallow costs

	Amount must be reasonable.	not related to solving current liability.
Charitable contributions *(Donations to tax exempt organizations)*	If it is a condition of employment or meets the necessary expense tests. Example: A minister is required to tithe according to his employment contract.	Disallow any other charitable contributions that are not considered necessary. Example: Review the employment contract.
Child Care *(Baby-sitting, day care, nursery and preschool)*	It meets the necessary expense test. Only reasonable amounts are allowed.	Cost of child care can vary greatly. Do not allow unusually large child care expense if more reasonable alternatives are available. Consider the age of the child and if both parents work.
Court-Ordered Payments *(Alimony child support, including orders made by the state, and other court ordered payments)*	If court ordered and being paid, they are allowable. If payments are not being made, do not allow the expense. Child support payments for natural children or legally adopted dependents may be allowed.	Review the court order.

Dependent Care (*For the care of the elderly, invalid, or handicapped.*)	If there is no alternative to the taxpayer paying the expense.	
Education	It is required for a physically or mentally challenged child and no public education providing similar services is available. Also allowed only for the taxpayer and only if required as condition of employment.	**Example**: An attorney must take so many education credits each year or they will not be accredited and could eventually lose their license to practice before the State Bar. A teacher could lose their position or in some States their pay is commensurate with their education credits.

Health Care	Required for the health and welfare of the family. Elective surgery would not be allowed such as plastic surgery or elective dental work. The taxpayer must provide proof of excessive out of pocket medical expenses.	To determine monthly expenses, the total out of pocket expenses would be divided by 12. The Schedule A may also be used to determine the yearly expense. Ensure that the amount used is out of pocket after insurance claims are paid. Substantiate that payments are being made.
Involuntary Deductions	If it is a requirement of the job; i.e. union dues, uniforms, work shoes.	To determine monthly expenses, the total out of pocket expenses would be divided by 12.
Life Insurance	If it is a term policy on the life of the taxpayer only.	If there are whole life policies, these should be reviewed as an asset for borrowing against or liquidating. Life insurance used as an investment is not a necessary expense.

Secured or legally perfected debts	If it meets the necessary expense test.	Taxpayer must substantiate that the payments are being made.
Unsecured Debts	If the taxpayer substantiates and justifies the expense, the minimum payment may be allowed. The necessary expense test of health and welfare and/or production of income must be met. Except for payments required for the production of income, payments on unsecured debts will not be allowed if the tax liability, including projected accruals, can be paid in full within 90 days.	Examples of unsecured debts which may be necessary expenses include: Payments required for the production of income such as payments to suppliers and payments on lines of credit needed for business and payment of debts incurred in order to pay a federal tax liability.

Taxes	It is for current federal, FICA, Medicare, state and local taxes.	Current taxes are allowed regardless of whether the taxpayer made them in the past or not. Delinquent state and local taxes are allowable depending on the priority of the FTL and/ or Service agreement with the state and local taxing agencies.
Optional Telephones and Telephone Services *(Cell phone, pager, Call waiting, caller identification or long distance)*	It must meet the necessary expense test.	
Student Loans	If it is secured by the federal government and only for the taxpayer's education.	Taxpayer must substantiate that the payments are being made.
Internet Provider/ E-mail	If it meets the necessary expense test – generally for production of income.	

Repayment of loans made for payment of Federal Taxes	If the loan is secured by the taxpayer's assets when those assets are of reasonable value and are necessary to provide for the health and welfare of the family.	

* * *

REPLY
BRIEF

Supreme Court, U.S.
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No. 09-907

IN THE
Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA AMERICA BANK, N.A.,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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INTRODUCTION

Respondent and the Government take different positions in this case. The Government[1] accepts a key premise of Petitioner's argument. The Government agrees that, "by incorporating the 'expense amounts specified under the National Standards and Local Standards,' Congress obviated the need for an individualized determination of all the debtor's actual expenses." U.S. Br. 26. Further, the Government acknowledges that the statute "is better read to allow a debtor with a car loan or lease payment to deduct the standardized amount even when it is greater than his actual payment." U.S. Br. 20. Thus, in the Government's view, a debtor with any auto loan or lease payment at all (whether $100 or $400 per month) is entitled to a deduction of $496, based on the amount specified in the current version of the IRS Local Standards chart.[2]

In advancing this argument, the Government departs from Respondent's position (Respondent Br. 12, 45-46) and from the IRS commentary to the Local Standard for transportation.[3] However, the Government does not agree with Petitioner that a debtor who has saved enough to purchase a car outright, with no loan payment, is entitled to the standardized amount specified in the IRS chart. The Government would grant the standardized ownership deduction only to a debtor with actual loan or lease payments. U.S. Br. 26.[4]

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[1] The United States is hardly a disinterested amicus in this case. U.S. Trustees bring virtually all motions to dismiss cases under 11 U.S.C. § 707(b), and in many cases object to debtors' claims that they are entitled to a transportation ownership allowance in the absence of car payments. Thus, the position of the United States in this case is the litigation position of U.S. Trustees.

[2] http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

[3] "The taxpayer is allowed the amount actually spent, or the standard, whichever is less." http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

This Court should reject the statutory interpretations of both the Government and Respondent. The text and structure of the Bankruptcy Code demonstrate that a chapter 13 above-median-income debtor who owns an automobile may deduct vehicle ownership expenses whether or not he or she has vehicle loan or lease payments. The various statutory interpretations proffered by the Government and Respondent would create an inconsistency between the treatment of automobile ownership expenses and other expenses (including food, clothing, apparel, and out-of-pocket medical care) under the same statutory language.

Moreover, the interpretations of the Government and Respondent would frustrate the statutory purpose. As the Government properly recognizes, the statutory scheme created by Congress has the virtue of minimizing transaction costs and subjective judicial variations by using standardized, uniform tables rather than requiring costly investigation and fact-finding into each debtor's individual circumstances. The scheme also allows debtors budget flexibility to scrimp on one category of expenses in order to pay more on others. For example, debtors often cut back on some allowed expenses (such as food or car ownership) in order to be able to save enough to send their children to private religious schools, or to pay rent higher than the IRS housing allowances in order to avoid neighborhoods they consider unsafe.

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[4] Ultimately, both the United States and Respondent contend that the Court need not decide the proper deduction for a debtor with vehicle loan or lease payments of less than the standardized amounts. U.S. Br. 21; Respondent's Br. 20, 31.

Respondent seeks to create a "heads-the-creditor-wins, tails-the-debtor-loses" system in which the IRS Standards act as a cap on debtor deductions, but where debtors with lower actual expenses are denied the amounts specified in the IRS Standards. When the IRS applies its standards for tax-collection purposes, it affords itself discretion to depart upwards or downwards, based on the facts and circumstances on the individual taxpayer.[5] Respondent wants the standards adjusted in one direction only – downwards. Thus, while its amicus Brunstad proposes that under the IRS Manual debtors with older cars should receive an additional $200 in operating expenses (beyond the amount specified in the IRS tables, Brunstad Br. 16), Respondent does not endorse this proposal. Respondent's proposal is fundamentally unfair and runs counter to the statute.

Respondent's statutory interpretation would also discourage debtors from choosing to file under chapter 13, which Respondent acknowledges Congress sought to promote. Respondent's Br. 5.

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[5] Internal Revenue Manual §§ 5.15.1.7.5, 15.15.1.8.3 (available at http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012).

Respondent's position would penalize thrifty debtors who rely on savings or defer replacing their old cars and reward those who purchase cars by borrowing and incurring debt – flying in the face of the pro-saving lesson of credit counseling, which Congress also sought to encourage in the 2005 bankruptcy amendments.

In addition, Respondent's approach would impose substantial real-world harm on debtors. Respondent concedes that many debtors, after filing for bankruptcy, will need to purchase or replace a vehicle – to obtain or maintain employment and care for their families. Respondent's Br. 41 (noting that need for a car is "[p]erhaps the most common motive for modification" of chapter 13 bankruptcy plans) (citation and internal quotation marks omitted). Under Respondent's test, a debtor with no car payments on the date of bankruptcy will be unable to claim an ownership expense deduction, even if he or she subsequently purchases a vehicle. Respondent's blithe answer is that, "if the need for a new car arises, the debtor may move to modify the plan to reduce the plan payments to permit purchase of a new vehicle." *Id.* Respondent's answer is relevant only to chapter 13. In section 707(b) dismissal proceedings, which the decision in this case will likely control as well (U.S. Br. 3 n.1), no after-the-fact plan modification is possible. The bankruptcy court will have already dismissed the case. Hence, Respondent's statutory interpretation is no answer in chapter 7 cases – a further reason to reject it.

The judgment below should be reversed.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE STATUTE SUPPORTS PETITIONER'S INTERPRETATION.

Three circuits have adopted Petitioner's interpretation of the statutory text. *See Tate v. Bolen*, 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary*, 549 F.3d 1148 (7th Cir. 2008); *eCast Settlement Corp. v. Washburn*, 579 F.3d 934 (8th Cir. 2009).[6]

A. The Text Distinguishes Between "Applicable" Expenses "Specified Under" IRS Standards And "Actual Expenses."

Section 707(b)(2) provides that "[t]he debtor's monthly expenses shall be the debtor's ***applicable*** monthly expense amounts ***specified under*** the National Standards and Local Standards . . . issued by Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). With respect to "the categories specified as Other Necessary Expenses issued by the Internal Revenue Service" (such as legal and accounting fees, child-care expenses, and education expenses), the relevant monthly expenses are "the debtor's ***actual*** monthly expenses." *Id.* (emphasis added).

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[6] The Government refers to the overruled district court decision in *Ross-Tousey*, in which the U.S. Trustee was a litigant. U.S. Br. 19, 28.

The statute thus draws a distinction between (i) "applicable monthly expense amounts specified under the National Standards and Local Standards" and (ii) "the debtor's actual monthly expenses" for "Other Necessary Expenses." Even Respondent, noting the terms "applicable" and "actual," acknowledges that "the use of different words suggests that Congress meant for the terms to have different meanings." Respondent's Br. 19.

"[A]mounts specified" under the Standards means the ***specific amounts*** of expenses to which a debtor is entitled. Neither Respondent nor the Government contests the argument in Petitioner's Opening Brief that the use of the term "specified" in Section 707(b)(2) indicates reference to a list of delineated amounts. Pet. Br. 26 (citing *Webster's New World Dictionary of the American Language: College Edition* (1958)). Amounts "specified" are, by definition, amounts listed and settled, and available for reference.

The IRS tables of National Standards and Local Standards cross-referenced in the statute specify certain expense amounts not only for transportation, but also for food, clothing, housekeeping supplies, personal care products, and out-of-pocket health care.[7] Determining what expense amounts are

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[7] The National and Local Standards for transportation are available at http://www.irs.gov/businesses/small/article/0,,id=104623,00.html. The National Standards for food, clothing, housekeeping supplies, and personal care products are available at http://www.irs.gov/businesses/small/article/0,,id=104627,00.html. The National Standards for out-of-pocket health care expenses are available at http://www.irs.gov/businesses/small/article/0,,id=173385,00.html.

"applicable" to a particular debtor does not require a court to consider a debtor's "actual" expenditures, but rather requires the court to consult the IRS tables to determine the expense amounts "specified under" the relevant Standard.

The various IRS tables specify different standardized expense amounts according to certain factors, such as where a debtor lives, the size of the debtor's household, the debtor's age, and other variables, depending on the particular chart involved. For example, a debtor with two cars living in a three-person household in Los Angeles would receive a monthly national transportation ownership expense of $992 and a monthly local transportation operating expense of $566. The same debtor would receive standardized monthly national expense allowances of $626 for food, $61 for housekeeping supplies, $209 for apparel and services, and $59 for personal care products and services. The debtor would also receive a standardized monthly allowance of $60 on a per-person basis for out-of-pocket medical care costs (for persons under 65), or $144 per person (for those ages 65 and older). Each of these amounts may be high for some debtors and low for others, but the net effect is to create an overall budget that allows debtors flexibility to economize on one category of expenses in order to pay more on others.

When Congress wished courts to consider "actual expenses," it said so explicitly. For example, Section 707(b)(2) refers to the "actual expenses paid by the debtor that are reasonable and necessary" for the care and support of elderly, chronically ill or disabled immediate family members, § 707(b)(2)(A)(ii)(II), and other "actual" expenses. *See* § 707(b)(2)(A)(ii)(III), (IV). Congress well understood the difference between "applicable" expenses specified in the IRS tables, and "actual" expenses.

With respect to transportation and other expenses addressed by the National Standards and Local Standards, the statute does not say that the monthly expenses shall be ***either*** the amounts specified under the IRS Standards, ***or*** the actual amounts, whichever is less. Nor does the statute provide that "monthly expenses are the debtor's applicable monthly expenses, not to exceed the amounts specified under the National Standards and Local Standards."

Congress could have drafted the statute in any of these ways, but it did not do so. The plain language and structure of the statute thus demonstrate that a debtor is entitled to the "applicable" automobile ownership cost deduction for a vehicle, as specified under the IRS standards, even if he or she is not actually making loan or lease payments on it. *See* Eugene R. Wedoff, *Means Testing in the New 707(b)*, 79 AM. BANKR. L.J. 231, 256 (2005); 6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c], at p. 707-43 (15th ed. Rev. 2009).

B. The Opposing Arguments Fail To Consider The Treatment Of Non-Transportation Expenses.

The Government insists that "[a] deduction for a particular type of expense is not 'applicable' if the debtor will not pay that expense during the plan period." U.S. Br. 7. But this argument contradicts the Government's own position that a debtor with a car payment of (say) $200 is entitled to the full ownership deduction (currently $496), even though the debtor will not be paying the full $496. U.S. Br. 20.

Moreover, the Government conflates the terms "actual" and "applicable." To be sure, an expense will not be an "actual" expense if it the debtor will not pay it during the plan period. But a standardized expense allowance may well be "applicable" to a debtor under an IRS chart, by virtue of his or her geographical location, size of household, and so on, regardless of whether it is "actually" incurred.

The statute does not use the locution "if applicable"; that is, the statute does not say that a debtor is entitled to an expense "if applicable" or "if actually incurred." Rather, the statute says that a debtor is entitled to the "applicable monthly expense amounts specified under the National Standards and Local Standards." Determining which expense amounts are "applicable" requires a court to consult the IRS tables, not to inquire as to a debtor's "actual" expenses. This interpretation gives complete meaning to the definition to the word "applicable," i.e., "capable of being applied," "having relevance," and "fit, suitable, or right to be applied." Respondent's Br. 18.

Further, the issue raised by this case – whether a deduction for a certain kind of expense can be "applicable" to a debtor if he or she will not actually pay that expense during the plan period – is not unique to transportation. The "National Standards and Local Standards" to which Section 707(b)(2) refers specify not only transportation ownership expenses but also monthly amounts for food, clothing, and other categories. All of the arguments of Respondent and the Government in this case (involving transportation expenses) are equally applicable to food, clothing, housekeeping supplies, personal care products, and out-of-pocket medical care expenses.

Yet there is no dispute that, based on the very same statutory language at issue in the case at bar, a debtor is entitled to claim the specified amounts as allowed expenses for food, clothing, medical care, and other expenses, regardless of whether he or she incurs any actual costs in those categories (because, for example, she lives with relatives). As explained by Bankruptcy Judge Eugene R. Wedoff:

> The IRM [Internal Revenue Manual] makes it clear that the total applicable expense allowance of the National Standards is to be given to each taxpayer, regardless of the taxpayer's actual expenditures in any of the individual National Standards categories or the taxpayer's actual total expenditures in the combined categories. Thus, even hypothetical taxpayers living in a Garden of Eden, with cost-free satisfaction of all their basic needs, would still be allowed a deduction from income in the total amount set out in the National Standards.

79 AM. BANKR. L.J. at 255. Respondent acknowledges that "[t]he amount of deduction for 'applicable' expenses under the National and Local Standards often will not be the actual amount incurred by the debtor." Respondent's Br. 19; *see also id.* at 29. Respondent quotes the Collection

Financial Standards: "[t]axpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent." Respondent's Br. 11. In addition, a debtor with no car is allowed a public transportation expense of $182 even if he or she lives in a location where there is no public transportation, relies on a borrowed car or rides from friends, or incurs no actual public transportation expenses for other reasons: "Taxpayers with no vehicle are allowed the standard amount monthly, per household, without questioning the amount actually spent."[8]

Neither Respondent nor the Government explains why car ownership should be singled out for disparate treatment, or why the same statutory language of Section 707(b)(2) should mean one thing in the context of autos and another thing with respect to food, clothing, or other types of expenses. Respondent seeks to defend a scheme in which debtors are entitled to standardized expense amounts under the "National Standards" of food, housekeeping supplies, apparel, and personal care products and services, but not under the Local Standards for transportation. Respondent's Br. 11-12. But there is no textual basis for that distinction. Section 707(b)(2) refers to "applicable monthly expense amounts specified under the National Standards and Local Standards." The statute does not discriminate between the two or suggest that the types of expenses are to be treated differently. All of the arguments raised by Respondent and the Government pertain equally to the expense allowances regarding food, clothing, medical care, and other categories.

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[8] http://www.irs.gov/businesses/small/article/0,,id=104623,00. html.

C. The Opposing Interpretation Would Create A Conflict Between Two Parts Of The Same Statute.

There is a further indication that Petitioner's statutory interpretation is correct. Two sentences after the opening reference to National and Local Standards, Section 707(b)(2)(A)(ii)(I) contains additional language: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." This provision further indicates that Congress intended to allow an ownership expense even when a debtor has no debt payment on a vehicle. Petitioner has explained the simple manner in which the transportation ownership deduction and the "Notwithstanding" clause work together. Petitioner's Br. 21, 27-28, 44-45.

In contrast, both Respondent and the Government struggle to reconcile their statutory construction with the "Notwithstanding" clause. Both insist that it is a rule of "exclusion," not "inclusion." Respondent's Br. 30; U.S. Br. 21-22. But if the transportation ownership deduction were measured by lease and loan payments, as Respondent contends, then the ***inclusion*** of the deduction in the first part of Section 707(b)(2) would be at odds with the ***exclusion*** of debt payments in the latter part of the same subsection. The exclusion of "payment for debts" indicates that Congress intended the "applicable monthly expense amounts specified under the National Standards and Local

Standards" to be determined by the standardized amounts set forth in the IRS tables, not by the debtor's actual payments for auto-related debts. Other portions of Section 707(b)(2) deal with debt payments. *E.g.*, 11 U.S.C. § 707(b)(2)(A)(iv).

The Government ultimately admits that, under its view, "[t]here is some uncertainty about how the 'notwithstanding' sentence operates in this context" of a vehicle loan payment, but it insists that the "debate is far afield." U.S. Br. 23 n.5. To the contrary: the fact that Respondent and the Government cannot offer a satisfactory interpretation of language two sentences away from the operative part of the very statutory provision under review confirms that their proffered construction has no merit.

D. The Opposing Textual Arguments Are Flawed.

Respondent and the Government make a series of other flawed arguments regarding the statutory text. First, they note that the IRS Local Standards for transportation provide separate deductions for vehicle ownership and vehicle operating expenses, and they maintain that such "distinct treatment of ownership and operating expenses would be superfluous if every debtor with a vehicle could claim both deductions." U.S. Br. 8; *see also* Respondent's Br. 18-19. But the reason for the distinct treatment has nothing to do with the statutory interpretations proffered by Respondent and the Government. The ownership and operating allowances are separate because the ownership expense allowance is established as a single national figure that does not vary by geographic region. The operating expense, in contrast, is set by the IRS on a regional basis, reflecting differences in insurance, tax, and other costs.

Next, the Government contends that "Congress used the word 'applicable' to require a threshold finding that an action or procedure is justified based on the individual debtor's specific circumstances." U.S. Br. 8. But that argument ignores the grammar of Section 707(b)(2). "Applicable" is an adjective that modifies the "amounts specified" in the Standards. It does not modify the phrase "debtor's monthly expenses," which appears at the beginning of Section 707(b)(2)(A)(ii)(I). The adjective "applicable" functions to narrow the reference to "amounts specified"; it does not refer to or modify the debtor's expenses. Hence, the determination of the "applicable" amounts focuses on the amounts specified in the IRS tables, not on the debtor's individual circumstances. That is true not only with respect to the transportation expense allowance, but also with respect to food, clothing, and the other expenses previously discussed.[9]

II. RESPONDENT'S RELIANCE ON IRS COMMENTARY IS MISPLACED.

Respondent urges this Court to consult not simply the IRS tables to which Section 707(b)(2) refers, but also to consult the accompanying IRS commentary in the IRS Collection Financial

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[9] Petitioner's statutory interpretation also meets the Government's test: a debtor must make an initial threshold showing that he or she is the owner of a car.

Standards and even the Internal Revenue Manual, which is an entirely separate document to which the statute does not refer at all. Respondent's Br. 20-21. However, the Government does not accept the view of the IRS commentary to the Local Standard for car ownership, and neither should this Court.

There are additional reasons that the IRS commentary does not control the proper interpretation of Section 707(b)(2). First, as neither the Government nor Respondent disputes, the IRS does not administer the Bankruptcy Code. Respondent's Br. 34. Neither the Government nor Respondent contends that the IRS is entitled to *Chevron* deference or any other form of legal deference. As Respondent acknowledges, "[i]t is the statute that governs." *Id.* at 34.

Next, the statute does not incorporate the IRS commentary or the Internal Revenue Manual into the Bankruptcy Code. Rather, the statutory language adopts only the "applicable monthly expense amounts specified under the National Standards and Local Standards." If Congress had intended to incorporate the entire IRS methodology, and not merely the Financial Standards, it would have said so directly. The use of the word "under" (Respondent's Br. 33) hardly means that Congress meant to incorporate the entirety of the IRS commentary. And Respondent's claim that the statute "implicitly refers to" the IRS Manual (Respondent's Br. 21), or that the Manual was cited in the legislative history (such as the dissenting views of a committee report, *id.* at 36), betrays the degree to which Respondent's argument has departed from the statutory text. The statute makes no reference to the Manual, either explicitly or implicitly, and contains no suggestion that Congress intended to delegate to the IRS the lawmaking power to decide how to administer the applicable monthly expense amounts – i.e., whether they were to be treated as standardized deductions, floors, or ceilings in light of a debtor's actual expenses.

Respondent contends that "it is not possible simply to look to the table alone because the table, without some guidance as to how to read it, is meaningless." Respondent's Br. 20. That suggestion is incorrect. It ***is*** possible to consult the table alone and to use the "amounts specified" as standardized deductions.

There is a good reason that the statute incorporates only the expense amounts and not the IRS commentary or Manual: the IRS has developed the commentary and Manual for its own tax-collection purposes, not for purposes of administering the Bankruptcy Code. The Government acknowledges that "the IRS uses the National and Local Standards" "[i]n connection with its own tax-collection efforts," "to help determine a taxpayer's ability to pay a delinquent tax liability." U.S. Br. 4 n.2 (internal quotation marks and citation omitted). The IRS retains the discretion to adjust its standards upwards or downwards based on the circumstances of the individual taxpayer. *See* n.5, *supra*. And the IRS disavows any intent to have the financial standards from the IRM apply in any context other than tax collection.[10]

III. RESPONDENT'S LEGISLATIVE HISTORY AND POLICY ARGUMENTS HAVE NO MERIT.

Respondent relies heavily on its perceived ability to discern what "Congress wanted," Respondent's Br. 21, as though Congress were a monolithic entity with a single intent. Respondent insists that "Congress wanted existing unsecured debts to be paid down as much as possible." *Id.* This argument is foreclosed by the statutory text and is flawed on its own terms.

Both Respondent and the Government recognize that debtors are entitled to claim the specified amounts in the IRS tables as allowed expenses for food, clothing, medical care, and other expenses, regardless of whether they incur any actual costs in those categories. Such a recognition is inconsistent with any suggestion that Congress had in mind a single statutory purpose to favor creditors over debtors in every instance.

Further, the Government recognizes that Congress sought to create an objective test and "obviate[] the need for an individualized determination of all the debtor's actual expenses." U.S. Br. 26. Even Respondent observes that Congress "sought to introduce more clarity into the calculation of the 'disposable income'" of above-median debtors governed by the chapter 7 means test. Respondent's Br. 6. Previously, "[r]equiring bankruptcy judges to determine what expenses were reasonably necessary led to wide-ranging, often inconsistent results." *Id.*

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[10] "Disclaimer: IRS Collection Financial Standards are intended for use in calculating repayment of delinquent taxes. These Standards are effective on March 1, 2010 for purposes of federal tax administration only. Expense information for use in bankruptcy calculations can be found on the website for the U.S. Trustee." http://www.irs.gov/individuals/article/0,,id=96543,00. html.

Every objective test creates questions of line-drawing and perceived fairness, but Congress chose to use "the amounts specified" under the National and Local Standards as a means of relieving bankruptcy courts from the burden of engaging in individualized analyses of the reasonableness of particular debtors' expenditures. "The provisions of section 707(b)(2) create a bright line test to determine whether a debtor's chapter 7 case is to be presumed abusive for purposes of section 707(b)." 6 COLLIER ON BANKRUPTCY ¶ 707.05[2][a], at 707-40. Respondent would return the bankruptcy system to the pre-2005 practices by focusing on debtors' actual expenses.

Respondent suggests its position is necessary to address bankruptcy abuse, but that is not so. The Department of Justice has found, based on a RAND Corporation study, that the IRS Standards in the means test impact only a very small proportion of bankruptcy filers.[11] Only 8 percent of chapter 7 filers are even governed by the means test, and fewer than 1% of chapter 7 debtors are presumed to be abusive.[12] Claims of rampant bankruptcy abuse are fiction.

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[11] U.S. Department Of Justice, Executive Office Of The U.S. Trustees, Report To Congress: Impact Of The Utilization Of Internal Revenue Standards On Debtors And The Court 3 (2007), available at http://www.usdoj.gov/ust/eo/public_affairs/reports_studies/docs/Rpt_to_Congress_on_IRS_Standards.pdf.

Respondent's statutory interpretation would discourage debtors from availing themselves of chapter 13, even though Respondent acknowledges that creditors "are usually better off, when a debtor uses Chapter 13" and "Congress tried to make Chapter 13 more attractive" to debtors. Respondent's Br. 5. Chapter 13 relief is purely voluntary on the part of a debtor, and a bankruptcy court cannot require a debtor to propose a chapter 13 repayment plan. *Id.* Only a tiny percentage of chapter 13 debtors are forced into that chapter by the chapter 7 means test; the vast majority of the above-median chapter 13 debtors choose chapter 13 voluntarily. *See* n.11, *supra*.

Other studies agree. *See* Clifford J. White III, *Making Bankruptcy Reform Work: A Progress Report in Year 2*, 16 AM. BANKR. INST. J. 16 (June 2007) (reporting on data from October 2005 to March 2007):

- "[o]f chapter 7 debtors, 7.9 percent have income above the applicable state median income";
- only 9.5 percent of above-median-income debtors in chapter 7 were presumed abusive, meaning over 90 percent were not (that is, they passed the means test);
- U.S. Trustees decided not to file motions to dismiss in about twenty percent of chapter 7 presumed-abuse cases (presumably because there was a good case for rebuttal).

[12] Respondent implies that, upon a finding of abuse, a court is required either to dismiss a chapter 7 case or to convert it to a chapter 13 case. Respondent's Br. 10. That implication is not correct. The court "may" dismiss or convert. 11 U.S.C. § 707(b). A court also has discretion not to do either in such circumstances.

Respondent's statutory interpretation would frustrate the congressional purpose of encouraging chapter 13, by making it comparatively less attractive for debtors and requiring more onerous repayment schedules. The failure rate in chapter 13 cases is already approximately two-thirds.[13] Respondent's approach would overburden already-stretched chapter 13 debtors and discourage debtors from voluntarily selecting chapter 13 in the first place, ultimately to the detriment of creditors overall.

The legislative history to which Respondent points (Respondent's Br. 42-43) is general and cannot be taken to mean that every dispute regarding the interpretation of the means testing provisions must be resolved in favor of creditors. *See In re Quick*, 371 B.R. 459, 463 n.10 (B.A.P. 10th Cir. 2007) ("Specifically, we do not agree that BAPCPA amendments that appear to benefit creditors must be interpreted in such a way as to benefit only creditors. In fact, many of the supposedly 'pro-creditor' amendments appear reflective of the normal give and take of the legislative process.").

Such an argument disregards the fact that many parts of the bill were the products of compromise. An earlier draft of the means test required calculation of "projected monthly net income," which provided for expense allowances "as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief." H.R. Rep. 105-540 (May 18, 1998), H.R. 3150, 105th Cong. (1998). In the version that Congress passed in 2005, the reference to the IRS "financial analysis" was removed and replaced with the current language – evidencing an intent that bankruptcy courts not be bound by the IRS commentary.

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[13] Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 505 & n.70 (2006) ("The overall discharge rate for the debtors in the seven districts covered by the Project was exactly the oft-repeated statistic of one-third.").

Respondent and the Government suggest that Petitioner's statutory interpretation would unfairly benefit above-median-income debtors. Respondent's Br. 22. But the same allegedly "unfair" benefit arises with respect to food, clothing, medical care, and other expenses – not merely transportation. Indeed, the effect is part and parcel of a statutory scheme that allows these debtors budget flexibility to economize on one category of expenses in order to pay more on others, instead of the scheme for below-median income debtors, under which the court can take into account debtors' individual needs.

Respondent claims that Petitioner's interprettation "would give debtors perverse incentives." Respondent's Br. 44. The opposite is true. Respondent's position would penalize thrifty debtors who rely on savings or wait longer to replace an old car and reward those who purchase a new car by borrowing and incurring debt. Ironically, these practices are inconsistent with the central lessons of the credit counseling that Congress sought to promote in the 2005 amendments, which require credit counseling and assistance in budgeting before bankruptcy and financial education during bankruptcy. *See* 11 U.S.C. §§ 109(h), 727(a)(12), 1328(g). It makes little sense to give debtors an incentive to favor incurring additional debt over savings:

> Borrowers who have saved money to purchase their current vehicles and are saving to replace them should be treated the same as those who are making loan payments. Certainly, ***the Bankruptcy Code should not encourage debtors to borrow, rather than save, to purchase cars***.

6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c], at 707-45 (emphasis added). The ownership expense standard simply recognizes that, whether a debtor borrows or saves money to buy a car, cars are not free. It is difficult to believe Congress intended that a debtor who had saved to buy her aging car would, if she filed bankruptcy due to medical expenses, be put into a position where she would be forced to go into debt to replace it.[14]

Respondent contends that depreciation is not an allowable expense. Respondent's Br. 39-42. Respondent misses the point. The issue is not the nature of depreciation. Rather, a debtor who owns an old car outright at filing likely will need to buy a new one before completion of a five-year chapter 13 plan. Indeed, a debtor may need to buy a car immediately, having been unable to do so before bankruptcy because of other debts. Granting an ownership allowance recognizes "the reality that a car for which the debtor no longer makes payments may soon need to be replaced (so that the debtor will actually have ownership expenses) . . . ." Wedoff, 79 AM. BANKR. L.J. at 258.

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[14] In fact, if a debtor's car is worth more than the relatively low amount that can be exempted in most states, 11 U.S.C. § 1325(a)(4) requires the debtor, in effect, to repurchase the nonexempt interest in the car by paying into the plan the present value of the amount in excess of the exemptions. *See* COLLIER ON BANKRUPTCY ¶ 1325.05.

The same reasoning applies where a debtor's car payments might end midway through a repayment plan. There would be no reason to bump up a debtor's payment schedule in such circumstances, because the statutory scheme creates an objective test, based on a reasonable transportation allowance, to be applied at the outset of what is usually a 60-month bankruptcy process for chapter 13 debtors. Given the inherent uncertainties of predicting a debtor's expenses several years into the future, it was entirely sensible for Congress to design a system that did not depend on the particular mix of a debtor's actual vehicle expenses at the time the case was commenced.

IV. THIS COURT'S DECISION IN *LANNING* DOES NOT PROVIDE A REASON TO AFFIRM THE JUDGMENT BELOW.

Both Respondent and the Government ask this Court to hold that, even if a debtor without vehicle loan or lease payments is entitled to a transportation ownership deduction under Section 707(b)(2), no such deduction would be appropriate in calculating a chapter 13 debtor's "projected disposable income" under 11 U.S.C. § 1325(b)(1)(B). Respondent's Br. 49-51; U.S. Br. 30-32. In other words, they ask this Court to affirm the Ninth Circuit's judgment on the basis of the recent decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). This Court should refuse that request.

First, the Ninth Circuit did not have the opportunity to examine the implications of *Lanning* for this case, and this Court would have to do so in the first instance, without the benefit of the views of the lower court. This Court may wish to defer the matter to the Ninth Circuit on remand.

Lanning concerned the interpretation of the phrase "***projected*** disposable income" in 11 U.S.C. § 1325(b)(1) (emphasis added). The means test at issue here involves a determination of the debtor's "monthly expenses" under Section 707(b)(2). As recognized by the Eighth Circuit in *Washburn*, 579 F.3d at 941-42 (and by other courts), the forward-looking approach to Section 1325(b)(1) adopted in *Lanning* is entirely consistent with Petitioner's statutory interpretation. A debtor's monthly expenses should be calculated on the basis of standardized expenses in the IRS tables, which contemplate a forward-looking number based on average vehicle ownership costs that a debtor can expect to pay over a lengthy period of time.

If anything, *Lanning* supports Petitioner here by underscoring the importance of predictability and ease of administration of bankruptcy cases. *Lanning* stressed that "only in unusual cases" would a court adjust a debtor's projected disposable income. 130 S. Ct. at 2475. Respondent seeks to do so in every case involving car ownership in the absence of lease or loan payments. The adjustments to income approved in *Lanning* should be reserved for truly "exceptional" cases, *id.* at 2471, and should not be allowed to re-create the system of individualized expense adjudications that Congress deliberately rejected in 2005.

Should this Court address *Lanning* at all, it may wish to reiterate that adjustments to projected disposable income are permissible only for events "that are known or virtually certain at the time of confirmation," 130 S. Ct. at 2478, and it can leave for another day (and further percolation in the lower courts) the question of whether the requisite certainty is present when addressing questions of vehicle ownership expenses.[15]

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[15] Respondent and the Government compare Petitioner's calculations on Schedules I and J with his computation of disposable income on Form 22C. Respondent's Br. 51-53; U.S. Br. 29. However, this Court did not grant review of the factbound question of the proper calculation of Petitioner's monthly disposable income. This Court need not resolve the question in order to reverse the Ninth Circuit's judgment in this case, and in the event it affirms, this Court should make clear that it is not addressing all elements of the proper computation of Petitioner's monthly disposable income in the case at bar.

CONCLUSION

This Court should reverse the judgment of the Ninth Circuit Court of Appeals and remand the case for further proceedings.

Respectfully submitted,

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Dated: September 7, 2010

AMICUS
CURIAE
BRIEF

No. 09-907

In the Supreme Court of the United States

JASON M. RANSOM, PETITIONER

v.

MBNA, AMERICA BANK, N.A.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

In a Chapter 13 bankruptcy proceeding, if a trustee or unsecured creditor objects to the confirmation of a debtor's plan, and the plan does not provide for all unsecured creditors to be paid in full, the bankruptcy court may confirm the plan only if all of the debtor's "projected disposable income" will be used to pay unsecured creditors. 11 U.S.C. 1325(b)(1)(B). The Bankruptcy Code defines the debtor's "disposable income" as his current monthly income less certain "reasonably necessary" expenses. 11 U.S.C. 1325(b)(2)(A)(i). For an above-median-income debtor like petitioner, those reasonably necessary expenses are determined using the means test set forth in 11 U.S.C. 707(b)(2). See 11 U.S.C. 1325(b)(3). That means test allows deductions for a variety of expenses, including the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards" issued by the Internal Revenue Service (IRS). 11 U.S.C. 707(b)(2)(A)(ii)(I). As relevant here, the IRS Local Standards include expense amounts for vehicle ownership expenses. The question presented is as follows:

Whether a Chapter 13 debtor who is not making any loan or lease payments on his vehicle may claim a vehicle ownership expense deduction in calculating the projected disposable income he has available to pay unsecured creditors.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case presents the question whether a Chapter 13 debtor who makes no car loan or lease payments may deduct a vehicle ownership expense in calculating the disposable income he will have available to pay unsecured creditors. The United States has a direct interest in the resolution of that question because United States Trustees—who are Department of Justice officials appointed by the Attorney General—supervise the administration of bankruptcy cases. See 28 U.S.C. 581-589a (2006 & Supp. II 2008); H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). In Chapter 13 cases, United States Trustees are authorized to review proposed repayment plans and submit comments about them to the bankruptcy courts. 28 U.S.C. 586(a)(3)(C). Congress has provided that "[t]he United States trustee may raise and may appear and be heard on any issue in any [bankruptcy] case or proceeding." 11 U.S.C. 307.

STATEMENT

1. a. Chapter 13 of the Bankruptcy Code permits an individual with regular income whose debts fall within statutory limits to obtain a discharge of those debts while retaining possession of his assets. 11 U.S.C. 1301 *et seq*. The debtor must agree to a court-approved plan under which he will repay his creditors a portion of his future income. 11 U.S.C. 1306(b), 1321, 1322, 1325. The debtor typically receives a discharge of debts only after he pays creditors in accordance with the terms of the plan. 11 U.S.C. 1325-1328.

Chapter 13 establishes several prerequisites to confirmation of the debtor's plan. See 11 U.S.C. 1325. If the trustee or an unsecured creditor objects to confirmation of the plan, and the plan does not provide for payment of all unsecured claims in full, the court may not confirm the plan unless "all of the debtor's projected disposable income to be received" during the plan period "will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. 1325(b)(1)(B). The question in this case concerns the manner in which a Chapter 13 debtor's "projected disposable income" is calculated.

b. Determining the debtor's "projected disposable income" is a two-step process. First, the bankruptcy court must calculate the debtor's "disposable income," based on his current income and expenses. 11 U.S.C. 1325(b)(2). Second, to determine the debtor's "projected disposable income" during the plan period, the court should account for "known or virtually certain information about the debtor's future income or expenses" that makes the initial calculation of disposable income a demonstrably unreliable predictor of the debtor's financial condition during the plan period. *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2474-2475 (2010); see 11 U.S.C. 1325(b)(1).

i. The Bankruptcy Code defines the term "disposable income" as the debtor's "current monthly income" minus the debtor's "reasonably necessary" expenses for "maintenance or support," qualifying charitable contributions, and business expenditures. 11 U.S.C. 1325(b)(2). For an above-median-income debtor like petitioner, the amounts that are "reasonably necessary" for support or maintenance are determined using the methodology (commonly known as the "means test") set forth in Section 707(b)(2). See 11 U.S.C. 1325(b)(3).[1]

Under the means test, certain allowed monthly expenses are deducted from the debtor's income to determine what funds he has available to pay creditors. As relevant here, the allowed monthly expenses include "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS]." 11 U.S.C. 707(b)(2)(A)(ii)(I).

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[1] Because the Section 707(b)(2) means test is also used to determine whether an individual is eligible for bankruptcy relief under Chapter 7, see 11 U.S.C. 707(b)(2)(A)(i), the Court's decision in this case may affect the disposition of Chapter 7 bankruptcy proceedings as well as cases under Chapter 13.

Section 707(b)(2) was amended in respects not relevant here in 2008. This brief refers to the 2006 version, which was in effect when petitioner filed his bankruptcy petition.

The IRS has established Local Standards for vehicle "ownership costs" and vehicle "operating costs." Resp. Br. App. 2a-3a.[2] For the vehicle ownership expense deduction, which is at issue here, the Local Standards identify amounts of $471 per month for a debtor's first car and $332 per month for his second. *Id.* at 5a. Those dollar amounts are based on the average cost of financing a vehicle as determined annually by the Federal Reserve Board. *Id.* at 3a; see *In re Meade*, 384 B.R. 132, 136 (Bankr. W.D. Tex. 2008). The IRS Collection Financial Standards state that "[t]he transportation standards consist of nationwide figures for loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by" geographic area. Resp. Br. App. 2a (italics omitted). They further explain that "[i]f a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." *Id.* at 3a.[3]

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[2] In connection with its own tax-collection efforts, the IRS uses the National and Local Standards "to help determine a taxpayer's ability to pay a delinquent tax liability." Resp. Br. App. 1a; see 26 U.S.C. 7122(d)(2). This brief generally cites the National and Local Standards in place at the time petitioner filed for bankruptcy, because those are the standards that apply to this case. See 11 U.S.C. 301(b), 707(b)(2)(A)(ii)(I).

[3] The Collection Financial Standards explain that, for IRS tax-collection purposes, "[t]axpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent." Resp. Br. App. 1a. Under the Local Standards, by contrast, "the taxpayer is allowed the amount actually spent or the standard, whichever is less." *Ibid.* The Collection Financial Standards note that "[t]he ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards." *Id.* at 2a.

ii. As this Court explained in *Lanning*, calculating a Chapter 13 debtor's "disposable income" is only the first step in determining the amount of "projected disposable income" the debtor will have available to repay unsecured creditors. 130 S. Ct. at 2471. The bankruptcy court also must "project" the debtor's disposable income over the life of the plan and "account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." *Id.* at 2471-2472, 2478; see 11 U.S.C. 1325(b)(1)(B). In so doing, the court tailors the results of the mathematical calculation of "disposable income" to account for circumstances that will affect the debtor's ability to repay creditors. *Lanning*, 130 S. Ct. at 2471-2472.

2. Petitioner filed a voluntary Chapter 13 bankruptcy petition in July 2006. Pet. App. 3, 17. Among his assets, he listed a 2004 Toyota Camry. *Id.* at 3. Petitioner owns that vehicle outright and therefore does not make any loan or lease payments. *Ibid.*; see J.A. 38, 44. Petitioner reported liabilities of $82,542.93 in general unsecured claims, including a $32,896.73 claim held by respondent. Pet. App. 3; J.A. 40-41. Petitioner reported a current monthly income of $4248.56, which qualified him as an above-median-income debtor. Pet. App. 3; J.A. 45-48.

In calculating his monthly disposable income, petitioner claimed the $471 vehicle ownership expense deduction. Pet. App. 3; J.A. 49. With that deduction, petitioner's total monthly expenses would be $4038.01, making his monthly disposable income $210.55. Pet. App. 3; J.A. 53. If petitioner's plan had been confirmed, the vehicle ownership deduction would have allowed petitioner to shield approximately $28,000 from unsecured creditors over the five-year life of his plan.

Petitioner proposed to pay $500 per month over the life of the plan, $389 per month of which would be paid to unsecured creditors, resulting in repayment of approximately 25% of the unsecured claims. Pet. App. 3, 45; J.A. 53, 56. The Chapter 13 trustee, respondent, and another unsecured creditor objected to confirmation of petitioner's plan on the ground that the plan did not provide for all of petitioner's projected disposable income to be used to pay unsecured claims, as required by 11 U.S.C. 1325(b)(1). J.A. 60, 71. They contended that petitioner had understated his projected disposable income by taking a vehicle ownership expense deduction that was not "applicable" to him because he has no loan or lease payment. J.A. 60, 67-71.

3. The bankruptcy court denied confirmation of the plan. Pet. App. 36-47. Relying on its prior decision in *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007), the court determined that, under the "plain language" of 11 U.S.C. 707(b)(2), a debtor "may only deduct a vehicle ownership expense if he is currently making loan or lease payments on that vehicle." Pet. App. 40-41.

4. The bankruptcy appellate panel affirmed. Pet. App. 15-35. The panel determined that Congress's use of the word "applicable" in Section 707(b)(2)(A)(ii)(I) evidenced its intent to limit the vehicle ownership deduction to debtors who are actually making loan or lease payments. *Id.* at 30-33. The panel explained that the vehicle ownership deduction "becomes relevant to the debtor (i.e., appropriate or applicable to the debtor)" only "when he or she in fact has such an expense." *Id.* at 32.

5. The court of appeals affirmed. Pet. App. 1-14. The court concluded that the "statutory language, plainly read" does not allow a debtor "to deduct an 'own-

ership cost' that the debtor does not have." *Id.* at 11. The court explained that, because the ordinary meaning of "applicable" is "capable of or suitable for being applied," the vehicle ownership expense deduction is "applicable" only if the debtor actually has an expense associated with vehicle ownership. *Id.* at 12 (internal quotation marks omitted). To allow the debtor to "assert a deduction for an expense he does not have," the court stated, would "read[] 'applicable' right out of the" statute. *Ibid.* (internal quotation marks omitted). The court of appeals further concluded that allowing a debtor to "diminish payments to unsecured creditors * * * on the basis of a fictitious expense not incurred by [him]" would be contrary to the statute's main objective, which is "to ensure that debtors repay as much of their debt as reasonably possible." *Id.* at 11, 13 (internal quotation marks omitted).

SUMMARY OF ARGUMENT

I. Because petitioner owns his vehicle outright and does not make loan or lease payments on the car, he is not entitled to deduct vehicle ownership expenses in calculating his "disposable income."

A. In calculating petitioner's monthly disposable income, the bankruptcy court was required to deduct, *inter alia*, "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. 707(b)(2)(A)(ii)(I); see 11 U.S.C. 1325(b)(3) (incorporating Section 707(b)(2) means test to calculate the disposable income of an above-median-income Chapter 13 debtor). A deduction for a particular type of expense is not "applicable" if the debtor will not pay that expense during the plan period. That reading of the statute is strengthened by Congress's reference to "the debtor's" applicable expenses, which suggests that the applicability of a particular deduction depends in part on the debtor's own circumstances.

Petitioner's reading of Section 707(b)(2)(A)(ii)(I), under which any debtor with a car may claim a vehicle ownership expense deduction, disserves the purposes for which the debtor's expenses are calculated. A debtor's "applicable monthly expense amounts" are deducted from his monthly income in order to ascertain what resources are available to pay his creditors. Allowing petitioner to deduct $471 per month in vehicle ownership expenses, notwithstanding the fact that petitioner owes no car loan or lease payments, would make that calculation demonstrably less accurate. Petitioner's approach also ignores the fact that the IRS Local Standards provide separate deductions for vehicle ownership and vehicle operating expenses. That distinct treatment of ownership and operating expenses would be superfluous if every debtor with a vehicle could claim both deductions.

B. Other provisions of the Bankruptcy Code confirm that a debtor who has no loan or lease payments is not entitled to a vehicle ownership expense deduction. In several places, Congress used the word "applicable" to require a threshold finding that an action or procedure is justified based on the individual debtor's specific circumstances, and "applicable" should have the same meaning here. Contrary to petitioner's contention, requiring such a threshold showing would not equate "applicable" with "actual." If a debtor qualifies for a vehicle ownership expense deduction because he has loan or lease payments, then the IRS Local Standard prescribes a standard amount to be used. Petitioner is likewise mistaken in relying on the statute's exclusion of "payments for debts." That provision excludes certain deductions that otherwise would be allowed; it cannot authorize a deduction for an expense that is not "applicable" to the debtor.

C. In enacting Section 707(b)(2)(A)(ii)(I)'s means test, and in directing that the test be used to calculate the disposable income of an above-median-income Chapter 13 debtor, Congress sought to ensure that such a debtor would pay as much as reasonably possible to his unsecured creditors during the life of his plan. Restricting the vehicle ownership deduction to debtors who will make vehicle loan or lease payments furthers that objective, while petitioner's approach would allow him to shield more than $28,000 in income from creditors during the plan period. Moreover, although Congress took steps in 2005 to scrutinize and circumscribe the expenses of above-median-income debtors, petitioner's approach would give such individuals a windfall not available to below-median-income debtors.

II. Even if a debtor without vehicle loan or lease payments could claim a vehicle ownership deduction under Section 707(b)(2)(A)(ii)(I)'s means test, no such deduction would be appropriate in calculating a Chapter 13 debtor's "projected disposable income" under 11 U.S.C. 1325(b)(1)(B). As this Court explained in *Hamilton* v. *Lanning*, 130 S. Ct. 2464 (2010), a bankruptcy court may account for "known or virtually certain information about the debtor's future income or expenses" that makes the initial calculation of disposable income an unreliable predictor of the debtor's available resources during the plan period. *Id.* at 2475. Here, allowing petitioner to claim a vehicle ownership expense would "deny creditors payments the debtor could easily make," a result that Congress sought to avoid. *Id.* at 2476.

ARGUMENT

WHEN CALCULATING HIS PROJECTED DISPOSABLE INCOME, AN ABOVE-MEDIAN-INCOME CHAPTER 13 DEBTOR WHO HAS NO VEHICLE LOAN OR LEASE PAYMENTS TO MAKE MAY NOT DEDUCT VEHICLE OWNERSHIP EXPENSES

A debtor who seeks Chapter 13 bankruptcy relief and who cannot satisfy all of his unsecured claims must propose a plan in which all of his "projected disposable income" will be used to pay unsecured creditors. 11 U.S.C. 1325(b)(1)(B). As part of the calculation of "disposable income," an above-median-income Chapter 13 debtor may deduct his "*applicable* monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. 707(b)(2)(A)(ii)(I) (emphasis added); see p. 3, *supra*. Because the IRS Local Standard for vehicle ownership expenses covers loan and lease payments alone, the "expense amounts specified under" that Standard are not "applicable" to debtors who do not make such payments. Limiting the vehicle ownership expense to debtors who actually incur loan or lease payments directly furthers Congress's efforts "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. No. 31, 109th Cong., 1st Sess. Pt. 1, at 2 (2005) (*House Report*).

I. THE VEHICLE OWNERSHIP EXPENSE DEDUCTION IS NOT "APPLICABLE" TO A DEBTOR WHO WILL NOT MAKE ANY LOAN OR LEASE PAYMENTS DURING THE PLAN

Under the means test contained in 11 U.S.C. 707(b)(2), petitioner may deduct the vehicle ownership expense only if it is "applicable" to him. The word "applicable" is naturally construed to require a threshold showing that the debtor will pay the expense over the life of the plan. That understanding is firmly rooted in the context of the statute, and it furthers the statute's primary purpose, which is to ensure that Chapter 13 debtors pay as much as they can reasonably afford before obtaining a discharge of their debts.

A. Section 707(b)(2)(A)(ii)(I) Allows Deduction Of Vehicle Ownership Expenses Only If Such Expenses Are "Applicable"

"As with any case of statutory construction, [this Court's] analysis begins with the language of the statute." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999) (internal quotation marks omitted). Congress provided that only "applicable" expense amounts under the National and Local Standards may be deducted from an above-median-income debtor's income. The vehicle ownership expenses expense amounts contained in the relevant IRS Local Standard are not "applicable" to a debtor who will not be making any loan or lease payments on his vehicle.

1. Under the Bankruptcy Code, a debtor's "disposable income"—*i.e.*, the presumptive amount he has available to pay unsecured creditors—is calculated by subtracting from the debtor's income his "reasonably necessary" expenses for "maintenance or support," qualifying charitable contributions, and business expenditures. 11 U.S.C. 1325(b)(2). For an above-median-income debtor like petitioner, the means test contained in Section 707(b)(2) is used to determine the amounts that are "reasonably necessary" for maintenance and support. 11 U.S.C. 1325(b)(3).

The means test provides, in pertinent part:

> The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides.

11 U.S.C. 707(b)(2)(A)(i)(I). This language identifies two categories of allowable expenses: "applicable" expense amounts specified in the IRS's National and Local Standards, which establish schedules for expenses such as food, clothing, health care, housing, and transportation; and "actual" amounts for certain other necessary expenses, such as legal and accounting fees, child-care expenses, and education expenses. See Resp. Br. App. 21a-27a.

Because the Bankruptcy Code does not define the word "applicable," that term should be given its ordinary meaning. See, *e.g.*, *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2471 (2010); *Smith* v. *United States*, 508 U.S. 223, 228 (1993). In ordinary use, "applicable" means "relevant," "appropriate," or "suitable." See *The New Oxford American Dictionary* 74 (2d ed. 2005) ("applicable" is "relevant or appropriate"); 1 *The Oxford English Dictionary* 405 (1978) ("applicable" is "[c]apable of being applied" or "fit or suitable for its purpose, appropriate"); *Webster's Third New International Dictionary of the English Language* 105 (1993) ("appropriate" is "capable of being applied; having relevance" or "[f]it, suitable, or right to be applied: appropriate"). This Court has used that common definition, see *Patterson* v. *Shumate*, 504 U.S. 753, 758-759 (1992) (equating "applicable" with "relevant" in the phrase "applicable nonbankruptcy law"), as did the court of appeals below, see Pet. App. 12 ("applicable" is "capable of or suitable for being applied" (internal quotation marks omitted)).

In Section 707(b)(2)(A)(ii)(I), "applicable" modifies "monthly expense amounts," which are the dollar amounts listed in the National and Local Standards. That structure evidences the purpose of the word "applicable," which is to identify those expenses that are relevant to the particular debtor. Congress did not say that the debtor may deduct *all* expense amounts listed in the National and Local Standards; it limited the deduction to "applicable" expense amounts. Congress thus required a threshold determination, based on the debtor's circumstances, that a particular expense category is "appropriate" or "suitable." Section 707(b)(2)(A)(ii)(I)'s reference to "*the debtor's* applicable monthly expense amounts" (emphasis added) reinforces that understanding and confirms that the applicability of a particular amount depends in part on the debtor's own expenses. See *In re Slusher*, 359 B.R. 290, 309 (Bankr. D. Nev. 2007).

2. To determine whether the vehicle ownership expense deduction listed in the Local Standards is "applicable" to petitioner, the courts below correctly sought to identify the types of expenses that are covered by the deduction and to ascertain whether petitioner will have those expenses. The vehicle ownership expense deduction accounts for the debtor's monthly expenses associated with acquiring use of the vehicle, *i.e.*, it is for "monthly loan or lease payments." Resp. Br. App. 2a. A table in the IRS Local Transportation Standards gives two standard nationwide amounts for vehicle ownership costs, one for a debtor's first car and the other for the

debtor's second car. *Id.* at 5a. As the court of appeals recognized, those expense amounts are "relevant to the debtor (i.e., appropriate or applicable to the debtor)" only if "he or she in fact has such an expense." Pet. App. 12 (internal quotation marks omitted).

This understanding of the term "applicable" is consistent with the word's usage in other contexts. For example, one dictionary provides the example of "add[ing] the applicable sales tax." *The American Heritage Dictionary of the English Language* 87 (4th ed. 2006) (italics omitted). No sales tax would be "applicable" if an individual did not purchase any items, just as no vehicle ownership expense would apply if the debtor did not have a car. But a sales tax similarly would not be "applicable" to a purchased item that was exempt from tax under the relevant law. By the same token, the vehicle ownership expense amounts specified in the Local Standards are not "applicable" to a debtor who owns a vehicle free and clear and therefore incurs no loan or lease payments.

3. Petitioner acknowledges (Br. 33) that bankruptcy courts must make a threshold determination—that the debtor has a car—before allowing the vehicle ownership deduction. He contends (Br. 14, 51), however, that the vehicle ownership expense is "applicable" to every debtor who owns a vehicle, regardless of whether he even has any loan or lease payments to make. In his view, "an applicable expense is one set down for a category, such as vehicle ownership expense, according to geographic region and number of cars." Br. 14; see NACBA Amicus Br. 9.

Petitioner's argument disregards the purposes that the means test is intended to serve. As the court of appeals explained, "what is important is the payments that debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors." Pet. App. 11 (internal quotation marks omitted). Petitioner's approach also cannot be reconciled with the IRS's decision to establish two separate vehicle expense deductions—one for ownership costs and one for operating costs. Resp. Br. App. 2a-3a, 5a-6a. That separate treatment of ownership and operating costs would be superfluous if every debtor with a vehicle were allowed both expenses. The distinction between the two deductions in the IRS Standards reflects the real-world fact that debtors who are making car payments have less income available to pay creditors than those who are not making such payments, even if both have vehicle operating expenses.

4. Petitioner suggests (Br. 3, 43, 45-48) that the court of appeals improperly gave precedence to the IRS's tax-collection guidelines rather than following the "plain language" of the Bankruptcy Code. That argument is misconceived.

Section 707(b)(2)(A)(ii) incorporates by reference the "National Standards and Local Standards" issued by the IRS, and it allows the debtor to deduct his "applicable monthly expense amounts specified under" those Standards. That provision directs bankruptcy courts to look to certain aspects of IRS tax-collection practice in identifying the expenses that particular debtors may deduct. To determine whether a particular Local Standard is "applicable" to a particular debtor, the court must identify the categories of expenses that the Standard is intended to cover. Although the Bankruptcy Code does not incorporate every aspect of the IRS's tax-collection practices, the IRS's authoritative explanation of the National and Local Standards may assist the court in properly applying those Standards.

In its Collection Financial Standards, the IRS explained that "[t]he transportation standards consist of nationwide figures for loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by" geographic area. Resp. Br. App. 2a (italics omitted); see *id.* at 16a; see also IRS, *Local Standards: Transportation* (Mar. 18, 2010), http://www.irs.gov/businesses/small/article/0,,id=104623,00.html (current version).[4] The Collection Financial Standards further provide that "[i]f a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." Resp. Br. App. 3a.

In giving weight to those statements by the IRS (see Pet. App. 10), the court of appeals did not improperly disregard the text of the Bankruptcy Code. Rather, the court appropriately treated those statements as relevant to the proper interpretation of the pertinent statutory language. The court correctly understood the IRS's explication of the Local Standards governing transportation expenses to establish that the "expense amounts specified under the" vehicle ownership Local Standard are not "applicable" to petitioner's own circumstances because those expense amounts pertain to a category of costs that petitioner does not incur.

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[4] Petitioner contends (Br. 15, 53) that the vehicle ownership expense is also designed to cover expenses such as taxes and depreciation. That is incorrect. Taxes, including personal property taxes associated with a vehicle, are considered "Other Necessary Expenses" by the IRS; they are not part of the National Standards and Local Standards. See Resp. Br. App. 20a-27a. Depreciation is not an expense but a way to measure the change in a car's value over time. See, *e.g.*, *Black's Law Dictionary* 506 (9th ed. 2009). The transportation expenses in the Local Standards do not account for depreciation of a vehicle; they are designed to determine monthly cash flow, not to measure the value of assets over time.

B. The Statutory Context Confirms That "Applicable" Expenses Are Those The Debtor Will Actually Pay

In interpreting a statutory term, the Court considers not only "the language itself [and] the specific context in which that language is used," but also "the broader context of the statute as a whole." *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997). Here, other provisions of the Bankruptcy Code confirm that a debtor who has no loan or lease payments is not entitled to a vehicle ownership expense deduction.

1. In the subclause immediately following the one at issue here, Congress provided that a "debtor's monthly expenses may include, *if applicable*, the continuation of actual expenses paid by the debtor" to care for an elderly, ill, or disabled household or family member. 11 U.S.C. 707(b)(2)(A)(ii)(II). In that context, the word "applicable" requires a threshold finding that the expense is one the debtor expects to continue paying during the plan period. It would be anomalous to interpret "applicable" to require that showing in Subclause (II), but to preclude it in the portion of Subclause (I) at issue here, when both provisions are designed to determine allowable expenses in bankruptcy. See, *e.g.*, *NASA* v. *FLRA*, 527 U.S. 229, 235 (1999) (word or phrase "should ordinarily retain the same meaning wherever used in the same statute").

Other provisions of the Bankruptcy Code similarly use the term "applicable" to denote rules or procedures that are triggered by the specific factual circumstances of the bankruptcy case. One such provision requires a debtor to file a statement of intention to retain or surrender property and, "if applicable, specify[] that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property." 11 U.S.C. 521(a)(2)(A). The word "applicable" is used to signify that the debtor should take only the actions that are justified by his own circumstances.

Similarly, the bankruptcy court may enter a Chapter 11 or 13 discharge only if it finds that 11 U.S.C. 522(q)(1) is not "applicable" to the debtor. 11 U.S.C. 1141(d)(5)(C), 1328(h). Section 522(q)(1) concerns a debtor who has been convicted of a felony that demonstrates the bankruptcy filing is abusive, or who owes a debt arising from certain securities law violations and torts. Here again, determining whether a particular restriction on dischargeability is "applicable" requires an inquiry into the debtor's individual circumstances—*i.e.*, whether he has a conviction or debt of the type specified in Section 522(q)(1).

2. Section 707(b)(2)(A)(ii)(I) refers separately to the debtor's "applicable monthly expense amounts" under the National and Local Standards and his "actual monthly expenses" for the other necessary expense categories allowed by the IRS. 11 U.S.C. 707(b)(2)(A)(ii)(I). Petitioner suggests (Br. 26, 39-42) that, by restricting the vehicle ownership expense deduction to debtors with loan or lease payments, the court of appeals improperly disregarded the statutory distinction between "applicable" and "actual" expenses. That argument misconceives the manner in which the vehicle ownership expense deduction is calculated under the relevant Local Standard.

The IRS Local Standard for vehicle ownership expenses prescribes an amount of $471 for a first car and $332 for a second car. See Resp. C.A. Br. 5a. Although the applicability of that Local Standard depends on the debtor's actual circumstances (*i.e.*, whether the debtor has vehicle loan or lease payments, and if so on how many vehicles), the "expense amounts specified under the National Standards and Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), are standardized amounts that are determined without reference to a particular debtor's actual monthly payments. See, *e.g.*, *Fokkena* v. *Hartwick*, 373 B.R. 645, 650 (D. Minn. 2007). That approach to determining the allowed expense amount is different from Congress's approach to "Other Necessary Expenses." The IRS has not promulgated any table of standardized amounts for those expenses, and the statute requires that "actual" costs be used. 11 U.S.C. 707(b)(2)(A)(ii)(I). This approach "gives meaning to the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent' or 'fictional.'" *In re Ross-Tousey*, 368 B.R. 762, 765 (Bankr. E.D. Wis. 2007), rev'd, 549 F.3d 1148 (7th Cir. 2008).

3. The Collection Financial Standards explain that, when the IRS uses the Local Standards in its tax-collection efforts, "the taxpayer is allowed the amount actually spent or the standard, whichever is less." Resp. Br. App. 1a; see note 3, *supra*. Respondent contends (Br. 12, 45-46) that bankruptcy courts should apply the same methodology in calculating the debtor's monthly expenses under Section 707(b)(2)(A)(ii)(I). Under that approach, a debtor who makes car loan or lease payments that are less than the standardized amounts reflected in the governing IRS table (here, $471 per

month, see Resp. Br. App. 5a), could deduct only his actual monthly payments rather than the standardized amounts.

That argument is not without force, since use of a debtor's actual vehicle ownership expenses (when they are less than the standardized amounts) would more fully accomplish Congress's purpose of making the debtor's entire resources available to unsecured creditors. In the government's view, however, Section 707(b)(2)(A)(ii)(I) is better read to allow a debtor with a car loan or lease payment to deduct the standardized amount even when it is greater than his actual payment. As applied to vehicle ownership expenses, Section 707(b)(2)(A)(ii)(I) thus strikes a balance between precision and ease of administration by requiring a debtor who invokes that deduction to establish the existence, but not the exact amount, of a vehicle loan or lease payment. See pp. 25-26, *infra*.

Section 707(b)(2)(A)(ii)(I) does not incorporate by reference every feature of the IRS's tax-collection methodology, but rather allows the debtor to deduct his "applicable monthly expense amounts specified under the National Standards and Local Standards." Although the IRS in collecting delinquent taxes considers the taxpayer's actual loan or lease payments, those actual "expense amounts" are not "specified" either in the Local Standards themselves or in any accompanying statements, but are instead derived from evidence unique to the particular debtor involved. The only vehicle ownership "expense amounts" that are "specified under the * * * Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), are the standardized amounts ($471 per month for a first car and $332 per month for a second, Resp. Br. App. 5a) listed in the relevant IRS table. The IRS's statement that "the taxpayer is allowed the amount actually spent or the standard, whichever is less," *id.* at 1a, supports this reading of the Bankruptcy Code, since that statement *contrasts* the "standard" with the "amount actually spent" and presumes that the former term refers to the standardized amounts set out in the IRS tables. This reading of Section 707(b)(2)(A)(ii)(I) also accords with the consensus view among the bankruptcy courts, see, *e.g.*, *In re Briscoe*, 374 B.R. 1, 6-7 (Bankr. D.D.C. 2007), and with the view of the Advisory Committee on the Federal Rules of Bankruptcy Procedure (Advisory Committee), see Official Bankr. Forms 22A, 22B & 22C advisory committee's note C.1 (2005-2008). In any event, the Court in this case need not decide the proper deduction for a debtor with vehicle loan or lease payments of less than the standardized amounts, since petitioner has no vehicle loan or lease payments at all.

4. Petitioner also contends (Br. 21, 27-28, 44-45) that he may claim the vehicle ownership expense deduction, even though he has no vehicle loan or lease payments, because 11 U.S.C. 707(b)(2)(A)(ii)(I) further provides that, "[n]otwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include payments for debts." Petitioner's reliance on that sentence is misplaced.

By its terms, the sentence in question operates to *exclude* "payments for debts" from the debtor's "monthly expenses," even when such payments are encompassed by the remaining sentences of Section 707(b)(2)(A)(ii)(I). Under no circumstances can the "notwithstanding" sentence have the effect of authorizing a deduction for an expense that the remainder of Section 707(b)(2)(A)(ii)(I) does not cover. Thus, if the court of appeals' analysis is otherwise sound—*i.e.*, if the amounts specified in the Local Standards for vehicle ownership expenses are not "applicable" to a debtor who has no loan or lease payments—the "notwithstanding" sentence provides no basis for allowing an ownership expense deduction.

Properly understood, the "notwithstanding" sentence serves to ensure that the bankruptcy court does not include unsecured debt payments in the calculation of the debtor's monthly expenses. In addition to forward-looking expenses such as child care and education expenses, the IRS standards for "Other [Necessary] Expenses" include a category for "unsecured debts" and for student loan payments (which are unsecured debts). Resp. Br. App. 21a, 25a-26a. Although the IRS treats these unsecured debts as expenses in determining a taxpayer's ability to pay delinquent taxes, that approach would be inappropriate in the means test calculation under the Bankruptcy Code, since the purpose of that calculation is to determine the amount of money the debtor has available to pay unsecured debts after accounting for his living expenses. Congress therefore excluded "payments for debts" from the list of other expenses the IRS otherwise would allow. See, *e.g.*, *In re Knight*, 370 B.R. 429, 436-437 (Bankr. N.D. Ga. 2007) (applying this reasoning to student loan debts).

The exclusion of "payments for debts" also can serve to avoid double-counting of expenses that could fall within two different expense provisions of the means test. Under 11 U.S.C. 707(b)(2)(A)(iii), a debtor may deduct as monthly expenses certain "payments on account of secured debts." Section 707(b)(2)(A)(ii)(I)'s exclusion of "payments for debts" helps to ensure that a debtor who makes vehicle loan payments may not deduct both the standardized amount set forth in the vehicle ownership Local Standard (under Clause (ii)(I)) and his actual monthly payment (under Clause (iii)). See, *e.g.*, *In re Hardacre*, 338 B.R. 718, 726-727 (Bankr. N.D. Tex. 2006); see also Pet. Br. 33-34 (accepting this view).[5]

C. Allowing Debtors Without Loan Or Lease Payments To Deduct Vehicle Ownership Expenses Would Disserve Congress's Purposes In Enacting BAPCPA And Would Lead To Inequitable Results

Congress enacted the provision at issue here in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23. Congress's overarching objectives in enacting BAPCPA were to ensure that debtors pay as much of their debts as reasonably possible and to eliminate opportunities for abuse. Treating the standardized vehicle ownership expense amounts as "applicable" to debtors who have no loan or lease payments would subvert those goals.

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[5] A vehicle loan payment typically is secured by the vehicle and thus would qualify as a secured debt. There is some uncertainty about how the "notwithstanding" sentence operates in this context. It could be read to allow the debtor to deduct his car loan payment under Clause (iii), but not to claim any amount under Clause (ii), on the theory that the Clause (ii) standardized amount is intended to compensate him for a debt payment. Or it could be read to allow the debtor to deduct his car loan payment under Clause (iii), and claim the portion of the standard amount in Clause (ii) that exceeds his actual debt payment, on the theory that the Clause (ii) amount is an allowance to which the debtor is entitled so long as he has car ownership expenses, and that the "notwithstanding" sentence simply requires him to subtract out any amounts he will actually pay for debts. This is the approach taken on Form 22C, which was developed by the Advisory Committee for use in determining disposable income in Chapter 13 cases. See J.A. 49, 52-53. This debate is far afield from the dispute in this case, however, because petitioner has no loan or lease payments whatsoever.

1. As the House Judiciary Committee report explained, a primary goal of BAPCPA is "to ensure that debtors repay creditors the maximum they can afford." *House Report* 2. The report explained that consumer bankruptcy filings were having significant "adverse consequences for our nation's economy," with creditors passing on to other consumers the substantial losses associated with bankruptcy. *Id.* at 4. The report concluded that those "bankruptcy debtors [who] are able to repay a significant portion of their debts" should do so, and that Congress should eliminate the "loopholes and incentives" in the current bankruptcy system that permit "opportunistic personal filings and abuse." *Id.* at 5.

In order to achieve those objectives, Congress changed the way in which bankruptcy courts would ascertain debtors' ability to repay their creditors. See *House Report* 2 (defining this change as "the heart of [BAPCPA's] consumer bankruptcy reforms"). Before BAPCPA was enacted, a Chapter 13 debtor's "disposable income" was defined as the debtor's current income less the amounts that were "reasonably necessary" for the debtor's "maintenance or support," "charitable contributions," or "business * * * expenditures." 11 U.S.C. 1325(b)(2)(A)-(B) (2000). Because the Bankruptcy Code provided no additional guidance for determining when an expense was "reasonably necessary," bankruptcy courts addressed that question on a case-specific basis. See, *e.g.*, *Hebbring* v. *United States Trustee*, 463 F.3d 902, 907-908 (9th Cir. 2006). In BAPCPA, Congress established a means test to determine whether a debtor seeking Chapter 7 bankruptcy relief has sufficient ability to repay creditors that he should instead be required to proceed under Chapter 13. BAPCPA § 102(a)(1)(C), 119 Stat. 27 (enacting 11 U.S.C.

707(b)(2)). Congress also incorporated that means test into Chapter 13 in order to cabin the amounts that above-median-income debtors may shield from creditors. *Id.* § 102(h)(2), 119 Stat. 33 (enacting 11 U.S.C. 1325(b)(2)-(3)).

2. In revising the method of calculating a debtor's "reasonably necessary" expenses, Congress sought, *inter alia*, to effectuate the Bankruptcy Code's requirement that a Chapter 13 debtor repay creditors to the maximum extent possible before obtaining a discharge. See 11 U.S.C. 1325(b)(1)(B). If petitioner were allowed to claim a vehicle ownership expense deduction that is unrelated to any expense he will actually incur, he would be able to shield approximately $28,000 from creditors over the lifetime of his plan. See p. 5, *supra*. That is precisely the type of "senseless result" Congress wanted to avoid. *Lanning*, 130 S. Ct. at 2475-2476.

Indeed, petitioner's argument suggests that BAPCPA opened rather than closed a loophole for above-median-income debtors. Prior to BAPCPA, petitioner could have deducted from his income only those expenses that he demonstrated were "reasonably necessary." See 11 U.S.C. 1325(b)(2)(A)-(B) (2000). Under that standard, petitioner would not have been allowed to deduct a vehicle ownership expense he did not have. In petitioner's view, however, the changes worked by BAPCPA allow him to deduct such an amount. Such a perverse reading of the statute "flies in the face of all Congress intended to accomplish" in BAPCPA. *In re Washburn*, 579 F.3d 934, 943 (8th Cir. 2009) (Magnuson, J., dissenting).

3. Petitioner's amicus observes (NACBA Br. 22) that "BAPCPA moved bankruptcy courts from a system of case-by-case determinations of reasonableness to a

more uniform approach, based on standardized deductions listed in IRS tables." The amicus is correct that, by incorporating the "expense amounts specified under the National Standards and Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), Congress obviated the need for an individualized determination of all the debtor's actual expenses. But by limiting permissible deductions to the "applicable" expense amounts, Congress made clear that, even with respect to types of expenses for which the IRS Standards prescribe a standardized deduction, the debtor's own circumstances remain relevant to the expense calculation. Allowing a debtor with no loan or lease payments to deduct vehicle ownership expenses would disserve the balance struck by Congress between precision and ease of administration.

The amicus further contends (NACBA Br. 23) that, "[g]iven the inherent uncertainties of predicting a debtor's expenses several years into the future," Congress could reasonably eschew any inquiry into "the particular mix of a debtor's actual vehicle expenses at the time the case is commenced." Petitioner himself concedes (Br. 33), however, that a debtor who claims a vehicle ownership expense must at least make the threshold showing that he owns a car. There is no reason to believe that requiring bankruptcy courts to make the additional determination whether the debtor is making loan or lease payments will meaningfully increase the administrative burden on the courts. And there is likewise no reason to believe that a debtor who owns a vehicle free and clear when his bankruptcy petition is filed is more likely to incur loan or lease payments during the plan period than a debtor who at the time of filing owns no car at all.

4. In addition to furthering the important goal of ensuring that debtors pay their debts to the extent possible, disallowing a vehicle ownership expense deduction under the circumstances presented here fosters equitable treatment of debtors under the Bankruptcy Code. Not only would petitioner's view create a new loophole in the Bankruptcy Code, but it would do so for only one class of Chapter 13 debtors—those with above-median incomes. Under petitioner's view, an above-median-income debtor could shield income from creditors by claiming expenses he will never incur, while a below-median-income debtor would have to prove that each of his expenses—including vehicle ownership expenses—are reasonably necessary under 11 U.S.C. 1325(b). Such a result would loosen expense requirements for the very class of Chapter 13 debtors that Congress wished to scrutinize more closely. Under the court of appeals' approach, by contrast, above-median and below-median debtors are both entitled to deductions only for those types of automobile expenses they actually pay.

Petitioner (Br. 55) and his amicus (NACBA Br. 24-25) suggest that the court of appeals' approach will penalize thrifty debtors who continue to drive old vehicles and encourage debtors to take on additional debt to purchase new cars. The Bankruptcy Code, however, takes the debtor as he is on the date he files his petition. Based on the debtor's financial circumstances at that time, the court determines what amounts he requires for living expenses and what amounts he will be able to pay creditors. *Lanning*, 130 S. Ct. at 2471. As one court explained, "[t]he statute is only concerned about protecting the debtor's ability to continue owning a car, and if the debtor *already* owns the car, the debtor is adequately protected. * * * When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors." *In re Ross-Tousey*, 368 B.R. at 766.

Rather than assume that Congress was trying to further policy goals far afield of what the means test was designed to accomplish, this Court should faithfully apply the BAPCPA provisions by which Congress sought to ensure that Chapter 13 debtors—particularly those with higher monthly incomes—will repay creditors as much as they reasonably can afford. In any event, debtors who drive older cars will not in fact be worse off than those who buy new cars, since the former will have less overall debt than the latter. And a thrifty debtor who needs to buy a new car during the life of the plan may seek a plan modification to account for that expense. See 11 U.S.C. 1329(a).

5. Petitioner contends (Br. 17, 60-61) that disallowing a vehicle ownership deduction in the circumstances presented here would deny Chapter 13 bankruptcy relief to himself and to other honest debtors. Petitioner is mistaken. As a general matter, a debtor like petitioner who has a positive monthly disposable income, so that he is able to make regular payments to creditors, should be able to propose a confirmable Chapter 13 plan. See 11 U.S.C. 1325(b) (listing requirements for plan confirmation). In most cases, the debtor's monthly income will be the same during the plan period as it was during the six months before he filed his petition, and his expenses will be the same during the plan period as at the time of filing. See *Lanning*, 130 S. Ct. at 2474-2475; see 11 U.S.C. 707(b)(2) (means test). If it is known or reasonably certain that a debtor's income or expenses will change in a manner that will affect his ability to pay

creditors, the bankruptcy court may account for that prospect in projecting his disposable income over the life of the plan. *Lanning*, 130 S. Ct. at 2471.

Petitioner's belief that he cannot obtain confirmation of a Chapter 13 plan absent a deduction for a vehicle ownership expense appears to rest on errors in his calculation of income and expenses. For example, on Form 22C, the form for calculating Chapter 13 debtors' disposable income, petitioner failed to claim a $70.00 health care expense and a $247.50 retirement deduction expense, even though he identified those expenses on his Schedule J, which lists current expenditures. See J.A. 43, 44, 53, 56; 11 U.S.C. 707(b)(2)(A)(ii)(I) (authorizing deduction of "Other Necessary Expenses," which include health care); 11 U.S.C. 541(b)(7), 1306(a)(1) (authorizing deduction for contributions to qualified retirement plans). Petitioner also listed different income amounts for his income and for taxes on Schedule I (which shows current income) and on Form 22C. See J.A. 43, 45, 50. When these discrepancies are resolved, petitioner's monthly disposable income will be known and he should be able to obtain confirmation of a Chapter 13 plan.

Petitioner is also mistaken in contending (Br. 28, 34) that Form 22C authorizes him to deduct vehicle ownership expenses he will not pay. The form instructs debtors to "[c]heck the number of vehicles for which you *claim* an expense," J.A. 49 (emphasis added), leaving it to the debtor and his attorney to determine whether that expense category is applicable to him. Contrary to petitioner's suggestion (Br. 28-31), the Advisory Committee has not taken the position that debtors who have no loan or lease payments may deduct vehicle ownership expenses. Instead, recognizing the disagreement in the lower courts on this issue, the Committee recently clarified that "[t]he forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance." Official Bankr. Forms 22A, 22B & 22C advisory committee's note C.1 (2005-2008). In any event, even if the form or the Committee's note supported petitioner's view, they could not trump the text of the statute, which requires the vehicle ownership expense to be "applicable" to the debtor. See, *e.g.*, *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2660 & n.5 (2010).

II. A DEBTOR'S "PROJECTED" DISPOSABLE INCOME SHOULD NOT EXEMPT VEHICLE OWNERSHIP EXPENSES THE DEBTOR WILL NOT INCUR

Even if this Court determines that a debtor without loan or lease payments may deduct a vehicle ownership expense under the means test used to calculate "disposable income," that does not end the matter. As this Court explained in *Lanning*, the Bankruptcy Code requires that all of a Chapter 13 debtor's "projected disposable income" be dedicated to repaying unsecured creditors. In determining the debtor's projected disposable income, the bankruptcy court should take account of the fact that funds claimed as vehicle ownership expenses are in fact available to pay secured creditors.

1. Calculating a Chapter 13 debtor's "disposable income" under the means test in Section 707(b)(2) is only the first step in determining what funds the debtor has available for his repayment plan. In order to confirm the plan, the bankruptcy court must ensure that the amount the debtor proposes to repay uses all the disposable income that the debtor is "projected" to receive over the plan's five-year life span. 11 U.S.C. 1324,

1325(b)(1)(B). As this Court explained in *Lanning*, that two-step process ensures that, in determining the debtor's ability to repay creditors, the court will take account of "known or virtually certain information about the debtor's future income or expenses." 130 S. Ct. at 2475.

2. Even if the means test would mechanically allow every debtor with a vehicle to claim a vehicle ownership expense deduction, the bankruptcy court should take account of the fact that some debtors will not pay those expenses. Here, where it is known that petitioner has no vehicle loan or lease payments, the bankruptcy court should ensure that the amounts petitioner claims under the Local Standard for vehicle ownership expenses are available to creditors as part of his "projected disposable income." That step is necessary so that all of petitioner's available funds can be used to pay unsecured creditors; without it, he will be able to shield more than $28,000 over the lifetime of the plan.

Although the facts of this case are slightly different from those in *Lanning*, the Court's holding and rationale apply equally here. Shortly before filing her bankruptcy petition, the debtor in *Lanning* had received a one-time buyout that made her pre-petition monthly income a demonstrably poor predictor of the income that she could expect to receive during the plan period. 130 S. Ct. at 2470. The Court explained that a "forward-looking approach" was necessary to ensure that the debtor would not be required, as a condition of plan confirmation, to commit to pay more during the plan period than she could actually afford. *Id.* at 2474-2475. Here, deducting vehicle ownership expenses in calculating petitioner's "projected disposable income" would be inappropriate, not because any change in the relevant circumstances has occurred or is expected to occur, but because petitioner currently has no vehicle loan or lease payments and has identified no reason to believe that he will make such payments during the plan period.

The Court in *Lanning* did not limit its holding to changed circumstances; it stated that the bankruptcy court could account for "known or virtually certain *information* about the debtor's future income or expenses" that makes the initial calculation of disposable income a demonstrably unreliable predictor of the debtor's financial condition during the plan period. 130 S. Ct. at 2474-2475 (emphasis added). And the concern that led the Court to the forward-looking approach is directly applicable here. If this Court rejects the construction of Section 707(b)(2)(A)(ii)(I) advocated by the government and by respondent, and holds that the IRS Local Standard for vehicle ownership expenses is "applicable" to petitioner, use of the "mechanical approach" in projecting petitioner's disposable income "would deny creditors payments the debtor could easily make." *Id.* at 2476. Here, as in *Lanning*, there is no reason to "throw[] out undisputed information bearing on how much a debtor can afford to pay." *In re Turner*, 574 F.3d 349, 355 (7th Cir. 2009); accord *In re Wentzel*, 415 B.R. 510, 517-518 (Bankr. D. Kan. 2009) (relying on this reasoning to deny vehicle ownership deduction for individual who had no car loan or lease payments). Accordingly, the fact that petitioner is not "projected" to have any vehicle ownership expenses provides an independent basis for affirming the judgment below.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 11 U.S.C. 707 provides:

Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

(II) $10,000.

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act,[1] or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

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[1] See References in Text note below.

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

(II) $10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

(i) on active duty (as defined in section 101(d)(1) of title 10); or

(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of

Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

(i) the court does not grant the motion; and

(ii) the court finds that—

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph—

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that—

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury—

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)(1) In this subsection—

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

2. 11 U.S.C. 1325 provides:

Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by

a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term "disposable income" means current monthly income received

by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

> (A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and
>
> (ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)[1] to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and
>
> (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

> (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

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[1] So in original. Probably should be followed by a second closing parenthesis.

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

AMICUS CURIAE BRIEF

1681

⑨

No. 09-907

IN THE

Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA, AMERICA BANK, N.A.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* G. ERIC BRUNSTAD, JR. IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*[1]

The undersigned *amicus curiae* teaches courses at the Yale Law School on bankruptcy law, domestic and international business reorganizations, commercial transactions, secured transactions, federal courts, and argument and reason. He began teaching at Yale in 1990 and has also taught at the Harvard Law School. In addition to his teaching, the undersigned is a contributing author to COLLIER ON BANKRUPTCY, responsible for writing several chapters of the Treatise. He is also a partner at the law firm of Dechert LLP; a prior Chair of the ABA Business Bankruptcy Committee; a former member of the Judicial Conference Advisory Committee on the Federal Bankruptcy Rules; and a Fellow of the American College of Bankruptcy.

The undersigned has briefed and argued numerous bankruptcy matters before the Court, including *Schwab v. Reilly*, 130 S. Ct. 2652 (2010); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324 (2010); *Florida*

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[1] No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties have been timely notified of the undersigned's intent to file this brief; both petitioner and respondent have consented to the filing of this brief. Copies of petitioner's and respondent's consents are filed herewith.

Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326 (2008); *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443 (2007); *Marrama v. Citizens Bank*, 549 U.S. 365 (2007); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); and *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). He has otherwise participated as counsel for one of the parties in numerous other bankruptcy matters before the Court, including *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010); *Central Va. Cmty. College v. Katz*, 546 U.S. 356 (2006); *Rousey v. Jacoway*, 544 U.S. 320 (2005); *Kontrick v. Ryan*, 540 U.S. 443 (2004); *Lamie v. United States Trustee*, 540 U.S. 526 (2004); *FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293 (2003); and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992). In addition, he has prepared and filed with the Court several amicus briefs in bankruptcy cases, including *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010); *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651 (2006); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004); *Archer v. Warner*, 538 U.S. 314 (2003); and *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995).

The undersigned is deeply interested in the subject of bankruptcy law and has written, taught, and lectured on the subject of bankruptcy plans and the proper qualifications for confirmation of bankruptcy plans. The purpose of this brief is to address matters that bear on the Court's determination of an important question of bankruptcy law that has divided the lower courts: in determining how much income a debtor in bankruptcy must devote toward the payment of claims under the debtor's chapter 13 plan, may the debtor deduct as an expense from his "projected disposable income" the "ownership cost" of a vehicle that has been fully paid off and for which the debtor is not actually making any ownership cost (loan or lease) payments during the plan period?

A purpose behind chapter 13 is to provide relief for the financially overburdened debtor in the form of an opportunity to retain assets and restructure debts while, at the same time, providing creditors with payments that reflect the debtor's realistic ability to pay. In this case, in calculating how much the debtor must devote toward the payment of the claims of his creditors, he seeks to deduct an expense he does not actually have. Not only is this at war with the text of the governing statutory scheme, it is also contrary to the purpose of chapter 13 and Congress' intent in amending the Bankruptcy Code in 2005. The undersigned presents this brief to address these important matters.

STATEMENT

On July 5, 2006, petitioner Jason Ransom ("Ransom") filed for chapter 13 bankruptcy relief. Joint Appendix ("JA") 1. One of the assets Ransom listed on his bankruptcy schedules was a two-year-old 2004 Toyota Camry that had no liens or encumbrances against it. JA-38. Ransom's liabilities included $82,542.93 in general unsecured claims. JA-41. Respondent MBNA America Bank ("MBNA") holds an unsecured claim of $32,896.73. JA-41.

Ransom's Statement of Current Monthly Income ("Form B22C") listed a current monthly income of $4,248.56 and deductions totaling $4,038.01. JA-53. Ransom included a deduction of $471 for vehicle ownership expenses in his Form B22C. JA-49. Based on these figures, Ransom calculated he had $210.55 in monthly disposable income. JA-53.

The Bankruptcy Code requires each chapter 13 debtor to propose a debt repayment plan. 11 U.S.C. § 1321.[2] The plan must provide that the debtor will dedicate future earnings or other income as necessary for the payment of claims as set forth in the plan. 11 U.S.C. § 1322(a)(1). Although creditors are not entitled to vote on a chapter 13 plan, any creditor may insist that the debtor either propose to pay the creditor's claim in full, or, if the debtor cannot pay claims in full, at least dedicate all of the debtor's "disposable income" to the payment of claims for not less than three years. 11 U.S.C. § 1325(b)(1). The term "disposable income" is defined to mean the amount of the debtor's income that is not reasonably necessary for the debtor's maintenance and support. 11 U.S.C. § 1325(b)(2)(A).

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[2] References to the Bankruptcy Code are to the current provisions of the Code, which are identical in relevant part to those provisions in effect at the time of Ransom's bankruptcy filing in 2006.

Ransom's chapter 13 plan (the "Plan") proposed to pay $500 per month for 60 months, with the ultimate repayment of only 25% of the general unsecured claims. JA-55. However, the figures provided on Ransom's Form B22C indicated that without the vehicle ownership expense allowance, Ransom's monthly disposable income was $681.55. JA-53. Accordingly, on August 25, 2006, the trustee filed an objection to plan confirmation and recommended denial of confirmation on the basis that Ransom improperly sought a deduction on Form B22C for a vehicle he owned free and clear. JA-59-60. On September 5, 2006, MBNA and Chase Manhattan Bank USA, N.A. ("Chase") (another creditor of Ransom) filed a joint objection to Ransom's chapter 13 plan, also on the grounds that Ransom was not devoting all of his projected disposable income to the plan pursuant to 11 U.S.C. § 1325(b)(1). JA-61-72.

The bankruptcy court ruled in favor of the trustee, MBNA, and Chase, and held that Ransom could not deduct a vehicle ownership cost unless he was currently making loan or lease payments on the vehicle. Pet. App. 46. On appeal, the bankruptcy appellate panel of the Ninth Circuit affirmed the decision of the bankruptcy court. Pet. App. 16. On appeal from the bankruptcy appellate panel, the Ninth Circuit likewise affirmed, explaining that the statutory language "does not allow a debtor to deduct an 'ownership cost' (as distinct from an 'operating cost') that the debtor does not have." Pet. App. 11. This appeal followed.

SUMMARY OF ARGUMENT

The decision below denying confirmation of Ransom's chapter 13 plan without prejudice should be affirmed because Ransom is not entitled to claim a deduction for vehicle ownership expenses inasmuch as he does not actually have these expenses. Allowing him to deduct this cost would contravene not only the text of the governing statutory scheme, but also its history and purpose. If in the future Ransom needs to purchase a car on credit while he is still making payments under his plan, he may request that the bankruptcy court modify his plan to accommodate this expenditure and reduce the amounts to be paid to unsecured creditors accordingly. 11 U.S.C. § 1329(a).

ARGUMENT

As noted, section 1325 of the Bankruptcy Code provides that if a trustee or unsecured creditor objects to confirmation of a debtor's chapter 13 plan (as happened here), the bankruptcy court may not confirm the plan unless either (1) the plan provides for the full payment of unsecured claims, or (2) the plan provides that the debtor will devote all of his or her "projected disposable income" to the payment of claims. 11 U.S.C. § 1325(b)(1). Although the Code does not define the phrase "projected disposable income," it does define "disposable income" to mean the debtor's "current monthly income" less "amounts reasonably necessary to be expended" for the debtor's maintenance and support, as well as for certain other items. 11 U.S.C. § 1325(b)(2)(A)(i), (ii). As this Court has explained, in determining what properly constitutes "amounts reasonably necessary to be expended" for the debtor's maintenance and support, the "full amount needed" is permitted for debtors whose income falls below the median for his or her State. *Hamilton v. Lanning*, 130 S. Ct. 2464, 2470 (2010). In contrast, in the case of a debtor with above-median income (which is the circumstance here), the debtor's expenses are capped, as set forth in section 1325(b)(3), which cross-references section 707(b)(2). In relevant part, section 707(b)(2)(A)(ii)(I) permits an above-median debtor to deduct from his or her monthly income "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards [promulgated by the Internal Revenue Service for determining how much unpaid tax debt a taxpayer can afford to pay], and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses [also promulgated by the IRS]." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

Ransom contends that he may deduct $471 from his monthly income for vehicle ownership expenses because this is what the IRS standards allow. The statute, however, permits him to deduct only "applicable" monthly expense amounts set forth in the standards. As respondent explains and as elaborated below, "applicable" does not mean expenses that Ransom does not actually have. Resp't Br. 26-30. As respondent notes, the vehicle ownership expense category would become "applicable" if it were necessary for Ransom to acquire a car on credit while making payments under his plan, and he could modify his plan accordingly if such were the case. *Id.* at 21. But such is not the case currently, and permitting Ransom to deduct an expense he does not actually have would contravene not only the text of the governing statutory scheme, but also its history and purpose.

A. Ransom's Argument Is Inconsistent with the History and Purpose of the Governing Statutory Scheme.

As is pertinent here, the Bankruptcy Code embraces two fundamental (and sometimes competing) purposes: to provide for "maximum and equitable distribution for creditors and ensur[e] a 'fresh start' for individual debtors." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 563 (1994); *see also Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). Congress has often struggled to balance these goals, particularly in the context of fashioning and modifying chapter 13 relief. The most recent body of substantial amendments to the Bankruptcy Code enacted in 2005 ("BAPCPA"), adjusted the balance significantly in favor of requiring greater distributions to creditors. More specifically, "[t]he heart of [BAPCPA's] consumer bankruptcy reforms consist[ed] of the implementation of an income/expense screening mechanism...which [was] intended to ensure that debtors repay creditors the maximum they can afford." S. Rep. No. 31, 109th Cong. 2 (2005). This screening mechanism is itself an overlay on a statutory system with a long history. Collectively, this history supports the conclusion that only actual expenses should be deducted from a debtor's "disposable income."

The "disposable income" test as a means for gauging a debtor's required plan contributions was first introduced as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (the "1984 Amendments"). Act of July 10, 1984, Pub. L. No. 98-353, § 317, 98 Stat. 356. Prior to that time, there was no specific statutory requirement that a debtor pay a specified amount to his or her unsecured creditors. Mindy L. Silver, *The Disposable Income Test: An Attempt Toward Uniformity*, 4 BANKR. DEV. J. 221, 222-23 (1987). Prior to the 1984 Amendments, all that section 1325(a) required (in relevant part) was that the debtor had to propose his or her chapter 13 plan in good faith. Act of Nov. 6, 1978, Pub. L No. 95-598, § 101, 92 Stat. 2649. Many courts used this good faith standard to require that debtors provide at least some minimum level of debt repayment for unsecured claims. Silver, *supra*, at 223-24. Without clear statutory guidance, however, judicial approaches varied.

Creditor groups criticized this and other aspects of the consumer debt relief provisions of the Bankruptcy Code and exerted pressure for reform. Jean Braucher, *A Fresh Start for Personal Bankruptcy Reform: The Need for Simplification and a Single Portal*, 55 AM. U. L. REV. 1295, 1302 (2006). In response, the National Bankruptcy Conference ("NBC") – an assembly of bankruptcy professionals and academics – first proposed the "disposable income test" in an effort to "dispel most of the criticism" and "avoid large scale dismantlement of the important consumer insolvency reforms realized after a decade of congressional consideration." *Oversight Hearings on Personal Bankruptcy Before the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary*, 97th Cong., 1st and 2d Sess. 212 (1981-82) [*BAFJA Hearings*]. As enacted, this test defined a debtor's "disposable income" relatively loosely as "'income which is received by the debtor and which is not reasonably necessary to be expended' for the 'maintenance or support of the debtor,' for qualifying charitable contributions, or for business expenditures." *Lanning*, 130 S. Ct. at 2469 (quoting 11 U.S.C. § 1325(b)(2)).[3] The NBC explained that, when determining the amount of disposable income to allocate to plan payments, the amount the debtor could reasonably afford should be "both the *floor* and *ceiling*" for chapter 13 plan purposes – both the minimum and maximum amount the debtor could and should be required to pay. *BAFJA Hearings* at 212-13 (emphasis in original).

Following the enactment of the "disposable income" test as part of the 1984 Amendments, courts wrestled with the proper determination of how much income was "reasonably necessary" for the maintenance or support of the debtor or a dependent of the debtor, and creditors ultimately pushed for additional legislation to refine the standard in a way that would generate greater recoveries on their claims. Braucher, *supra*, at 1302. Largely to address the concerns of the credit industry, Congress enacted BAPCPA with the express purpose of "ensur[ing] that debtors repay creditors the maximum they can afford." S. Rep. No. 31, 109th Cong. 2 (2005).

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[3] The disposable income test "was adopted by Congress almost verbatim from a proposal made by the National Bankruptcy Conference at hearings before the House Judiciary Committee." 8 COLLIER ON BANKRUPTCY ¶ 1325.08[1] (15th ed. rev. 2007). The "most significant legislative history available in interpreting that provision" is essentially contained in the 1981-82 hearings leading to the enactment of that section. *Id.*; *see also BAFJA Hearings* at 181-223.

To effectuate that purpose, Congress directed more closely how "disposable income" would be calculated. *See Lanning*, 130 S. Ct. at 2469. As noted, the current statutory provisions state that "disposable income" is to be determined by deducting from the debtor's current monthly income "amounts reasonably necessary to be expended" for, *inter alia*, the maintenance and support of the debtor and his or her family. 11 U.S.C. § 1325(b)(2)(A)(i), (ii). The phrase "amounts reasonably necessary to be expended" was likewise newly defined. *Lanning*, 130 S. Ct. at 2470. For debtors with income in excess of the state median, certain specified expenses are allowed with reference to the Internal Revenue Service standards as guidelines to determine whether they are reasonably necessary. *See* 11 U.S.C. §§ 707(b)(2), 1325(b)(3)(A). According to section 103 of BAPCPA, the Secretary of the

Treasury was given "the authority to alter the Internal Revenue Service standards established *to set guidelines for repayment plans* as needed to accommodate their use under section 707(b) of title 11, United States Code." Act of Apr. 20, 2005, Pub. L. No. 109-8, § 103(a), 119 Stat. 35 (emphasis added).

Although BAPCPA added additional detail to the disposable income test, it did not depart from the fundamental statutory directive already in place that amounts claimed as expenses must be "amounts reasonably necessary to be expended" for, *inter alia*, the maintenance and support of the debtor and his or her family. 11 U.S.C. § 1325(b)(2)(A)(i), (ii). In other words, Congress sought only to refine how the disposable income standard would be applied, not adopt an entirely new standard. Both prior to and after 2005, section 1325(b) used and continues to use the phrase "reasonably necessary to be expended," and expenses that a debtor does not actually have simply cannot be "necessary to be expended," let alone "reasonably" so.

Further, in refining the disposable income test, the amounts listed in the IRS standards were intended to be guidelines. *See, e.g.*, 145 Cong. Rec. H2664 (daily ed. May 5, 1999) (statement of Rep. Menendez) (discussing the "allowable living expenses *based on* IRS guidelines") (emphasis added); 145 Cong. Rec. H2721 (daily ed. May 5, 1999) (statement of Rep. Royce) (explaining that a precursor bill "impose[d] clear objective standards to give debtors, creditors, judges and trustees *guidance* in applying a means test used to determine who has the ability to repay some of their debt.") (emphasis added); 145 Cong. Rec. H2723 (daily ed. May 5, 1999) (statement of Rep. Gekas) ("the IRS standards provide the starting point and from there we have a better system at hand."). Hence the use of the term "applicable" in section 707(b)(2)(A)(ii)(I). Again, expenses that a debtor does not have cannot be "applicable" consistent with the relevant history.

B. The Legislative History Does Not Demonstrate that Ransom Is Entitled to a Deduction.

Amicus Curiae National Association of Consumer Bankruptcy Attorneys ("NACBA") contends that BAPCPA's legislative history demonstrates that Ransom is entitled to the deduction he seeks. NACBA cites to statements that refer to the IRS standards as "inflexible" and do not take account of "the debtor's actual expenses," S. Rep. No. 31, 109th Cong. 552 (2005), contending that these foreclose consideration of Ransom's actual circumstances. Analysis of these statements, however, indicates that they were directed at situations where a debtor has expenses *greater* than the amount permitted by the IRS standards, not *lower* than them. *See,* *e.g.*, 145 Cong. Rec. H2719 (daily ed. May 5, 1999) (statement of Rep. Conyers) ("where the IRS does allow specific expense items, the permitted amounts are often inhumanely inadequate."); 145 Cong. Rec. H2720 (daily ed. May 5, 1999) (statement of Rep. Gekas) (discussing possibility of debtor seeking Rolls Royce as reasonable and necessary).

As currently formulated, the relevant point of the disposable income test is to make sure that debtors with above-median income do not deduct from their monthly income expenses that are "unreasonably" large, with the IRS standards serving as a benchmark guideline for determining "reasonableness." Like any cap, the guidelines embody a certain degree of inflexibility. That "inflexibility," however, does not mean that the guidelines sanction expenses a debtor does not actually have.

NACBA contends that Respondent's position would unfairly penalize a debtor who did not incur debt to acquire a vehicle, and favor a debtor who did. Nat'l Ass'n. of Consumer Bankr. Attorneys Amicus Br., *Ransom v. MBNA America Bank, N.A.*, No. 09-907, 2010 WL 2662747, at *25 (U.S. June 28, 2010) [*NACBA Amicus*]. Congress, however, was aware of this consequence as it was raised repeatedly during the legislative process. *See, e.g.*, S. Rep. No. 31, 109th Cong. 557 (2005) (dissenting views); 145 Cong. Rec.

H2719 (daily ed. May 5, 1999) (statement of Rep. Conyers). Congress nevertheless enacted the legislation that it did. Further, Congress' reference to the Internal Revenue Manual suggests that Congress was not entirely unsolicitous of debtors who own their cars "free and clear." Under the Internal Revenue Manual, if the car is over six years old or has 75,000 or more miles on it, the debtor is entitled to an extra $200 per month operating expense. IRS, Internal Revenue Manual § 5.8.5.5.2 ("Treatment of Non-Business Transportation Expenses"), http://www.irs.gov/irm/part5/irm_05-008-005.html (last visited Aug. 13, 2010).

NACBA further cites to an early version of BAPCPA, which calculated "projected monthly net income" on the basis of expense allowances "as determined under the Internal Revenue Service financial analysis [handbook in the Internal Revenue Manual] for expenses in effect as of the date" the debtor files for bankruptcy. *NACBA Amicus* at *21. From this, NACBA infers a congressional intent that bankruptcy courts would "not be bound by the IRS commentary contained in the [Internal Revenue Manual explaining the standards]," but rather that courts should look only to the IRS standards tables for the relevant expense items a debtor may deduct from his or her monthly income. *Id.* (citing H.R. Rep. No. 540, 105th Cong. (1998) and H.R. 3150, 105th Cong. (1998)). This is perhaps most relevant because the Financial Analysis Handbook in the Internal Revenue Manual indicates that only actual expenses are to be included under the standards. Resp't Br. App. 16a, § 5.15.1.7 ¶ 4.B; IRS, *Internal Revenue Manual* § 5.15.1.7 ¶ 4.B (2005); IRS, *Internal Revenue Manual* § 5.15.1.7 ¶ 4.B (2010), http://www.irs.gov/irm/part5/irm _05-015-001.html (last visited Aug. 13, 2010). While it is true that Congress altered the language of the statute by dropping specific reference to the IRS's Financial Analysis Handbook in the Internal Revenue Manual, the legislative history is clear that Congress did not thereby intend to prohibit reliance on this resource in applying the standards.

Even though the explicit "financial analysis" language was dropped from the statutory text during the course of the legislative process, subsequent legislative reports issued in connection with various iterations of BAPCPA (including the final report that ultimately accompanied the statute itself) explicitly reference the Financial Analysis Handbook's relevance in determining the debtor's expense allowances:

> In addition to other specified expenses, the debtor's monthly expenses—exclusive of any payments for debts (unless otherwise permitted)—must be the applicable monthly amounts set forth in the Internal Revenue Service Financial Analysis

> Handbook as Necessary Expenses under the National and Local Standards categories and the debtor's actual monthly expenditures for items categorized as Other Necessary Expenses.

H.R. Rep. No. 3, 107th Cong. 9 (2001) (footnotes omitted); H.R. Rep. No. 40, 108th Cong. 129 (2003) (footnotes omitted); S. Rep. No. 31, 109th Cong. 13-14 (2005) (footnotes omitted). Indeed, Congress even went so far in the 2003 and 2005 reports to insert a footnote after "Internal Revenue Service Financial Analysis Handbook" clarifying the reference to mean the "INTERNAL REVENUE SERVICE, INTERNAL REVENUE MANUAL–Financial Analysis Handbook ch. 5.15.1." H.R. Rep. No. 40, 108th Cong. 129, n.52 (2003); S. Rep. No. 31, 109th Cong. 13, n.62 (2005). Given these references in the legislative history, the most plausible interpretation of Congress' deletion of a specific reference to IRS's Financial Analysis Handbook from the statutory text was that the sponsors thought it was unnecessary – as a matter of course, the IRS's Internal Revenue Manual would be relevant in interpreting the IRS's standards.

C. The Ninth Circuit's Analysis Is Correct.

Petitioner contends that the Ninth Circuit's opinion takes the position that the methods of the Internal Revenue Manual can be applied to determine the availability of the vehicle ownership expense deduction. Pet'r Br. 7. The Ninth Circuit, however, relied on its view of a plain reading of the text of the statute to arrive at its conclusion. Pet. App. 11 ("As did our BAP, we decide this issue *not on the IRS's manual*, but instead on the 'statutory language, plainly read,' which we believe does not allow a debtor to deduct an 'ownership cost' (as distinct from an 'operating cost') that the debtor does not have.") (citation omitted) (emphasis added). The Ninth Circuit's analysis is correct.

As noted, section 707(b)(2)(A)(ii)(I) provides, in pertinent part, that "[t]he debtor's monthly expenses shall be the debtor's *applicable* monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides...." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). As the Ninth Circuit discussed, the adjective "applicable" modifies the phrase "monthly expense amounts." Pet. App. 12. The phrase "specified under the National Standards and Local Standards" modifies the phrase "monthly expense amounts" as well. The word "applicable" and the phrase "specified under the National Standards and Local Standards" cannot mean the same thing, because that would write the word "applicable" out of the statute. Courts should disfavor interpretations of statutes that render statutory language superfluous. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998).

The word "applicable" is not defined in the statute; accordingly, it is appropriate to turn to the term's ordinary, common meaning. *Lanning*, 130 S. Ct. at 2471. As the Ninth Circuit noted, "applicable" means "capable of or suitable for being applied." Pet. App. 12 (quoting MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 60 (11th ed. 2005)), or "appropriate," AMERICAN HERITAGE DICTIONARY 63 (1976); *see also* WEBSTER'S NINTH COLLEGIATE DICTIONARY 97 (1988) (listing "relevant" as a synonym). In context, the word "applicable" most plausibly means those monthly expense amounts that are both specified under the National Standards and Local Standards and that are appropriate or relevant, and expenses that a debtor does not have do not qualify.

In contrast, Ransom's strained analysis reaches beyond the clause at issue ("the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards") to the next clause ("and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses...for the area in which the debtor resides...."), which is separate and distinct, as signaled by the comma between them. Ransom contrasts the word "applicable" appearing in the first clause with the word "actual" appearing in the second, arguing that the use of the two different words is significant and requires an interpretation of "applicable" stripped of any reference to Ransom's actual circumstances. There is no reason, however, to adopt such an unnatural gloss on the term "applicable." Rather than conjure meaning from the distinct use of the two words "applicable" and "actual" to achieve an unnatural reading of the word "applicable," it is preferable to adopt the more natural reading of the term. That is all the more so where, as here, the natural reading is supported fully by the history and purpose of the governing legislative scheme, whereas Ransom's interpretation is not.

D. A Debtor Who Needs to Purchase a Car on Credit During the Plan Repayment Period May Modify the Plan to Account for the Expense.

Finally, as Respondent notes, a debtor who owns a car free and clear at the time of confirmation of his or her plan, but later needs to purchase a car on credit while making plan payments, is not without a remedy: he or she may seek to modify the plan to account for the new expense and reduce the amount to be paid to unsecured creditors accordingly. 11 U.S.C. § 1329(a). In this case, that need is not even in prospect. At the time of filing, Ransom's car was merely two years old and he cannot properly claim a blanket monthly allowance for an ownership expense he does not have.

CONCLUSION

For the foregoing reasons and the reasons contained in Respondent's brief, the decision of the court below should be affirmed.

Respectfully submitted,

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AMICUS
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BRIEF

No. 09-907

IN THE

Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA AMERICA BANK, N.A.,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF PETITIONER URGING REVERSAL

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

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INTEREST OF *AMICUS CURIAE*

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 4,800 consumer bankruptcy attorneys nationwide. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. Member attorneys and their law firms represent debtors in an estimated 800,000 bankruptcy cases filed each year.[1]

NACBA seeks to protect the rights of consumer bankruptcy debtors and advocates nationally on issues that cannot adequately be addressed by individual member attorneys. Among other things, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA has participated as *amicus* in numerous cases, including *Hamilton v. Lanning*, No. 08-998 (U.S. June 7, 2010), *Schwab v. Reilly*, No. 08-538 (U.S. June 17, 2010), and *Kawaauhau v. Geiger*, 523 U.S. 57 (1998).

NACBA and its membership have a vital interest in the resolution of the question presented, because the proper interpretation of the means test is of vital interest to consumer debtors. NACBA member attorneys represent individuals in a large portion of all consumer debtor cases filed. Through its educational and representational functions, NACBA seeks to ensure the predictability of bankruptcy relief for both consumer bankruptcy debtors and the consumer bankruptcy bar.

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[1] This brief has been filed with the written consent of the parties, which is on file with the Clerk of Court. Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus* or its counsel, make a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

As part of its 2005 revision of the Bankruptcy Code, Congress added a new "means test" for consumer bankruptcies. This new test functions to determine whether chapter 7 cases filed by higher income debtors are presumed to be abusive under Section 707(b), 11 U.S.C. § 707(b). The test is also used for purposes of determining the amount of "projected disposable income" available to be paid over the course of a chapter 13 plan, particularly for expenses of debtors with above median income. It replaces a case-by-case analysis of the debtor's ability to pay with a simplified, more objective computation.

The "means test" computation depends largely on the use of standardized expense amounts for food, clothing, housing and transportation, instead of an individualized analysis of the reasonableness of a particular debtor household's expenditures. According to the words of the statute, a debtor's expense allowances "shall be" the "applicable monthly expense amounts specified under the National Standards and Local Standards . . . issued by Internal Revenue Service for the area in which the debtor resides." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

By moving from a regime of case-by-case determinations of reasonableness to a more uniform approach, Congress relieved the bankruptcy courts of the difficulty of adjudicating highly individualized disputes about debtors' lifestyle decisions. It also moved the focus from the reasonableness of particular expenses for above-median-income debtors to an aggregated standard budget that is presumed to represent a reasonable total level of spending for different size households in particular geographic regions of the country.

As is often the case with statutory schemes that involve standardized approaches to minimize transaction costs, application of the "means test" computation to a particular debtor household can, occasionally, produce disputes about the perceived fairness of the test when a particular debtor's actual expenditures depart from the standardized assumptions. As with all conflicting interpretations of the Bankruptcy Code, however, resolution of such disputes must begin and end with a determination of the statutory language and what Congress intended.

The question presented by this case concerns one disputed step in the "means test" calculation, namely, whether above-median-income chapter 13 debtors who own vehicles they use for transportation may take the ownership expense deduction under the means test, regardless of whether they are obligated for debt payments on the vehicle at the moment they file their bankruptcy petition. The proper answer to this question is "Yes," for several reasons.

First and foremost, the plain meaning of the statutory language enacted by Congress demonstrates that all above-median-income chapter 13 debtors with cars are entitled to an ownership deduction, even if they are not actually making payments on their vehicles. That is the view taken by the leading COLLIER ON BANKRUPTCY treatise and other authorities. For purposes of computing the amount of monthly payments required to be paid by a higher income chapter 13 debtor, Section 707(b)(2) establishes a formula that uses standardized expense allowances for several categories of household expenses, including transportation, rather than the debtor's actual expenses. The statute treats "applicable monthly expense amounts" in a categorical fashion based on a debtor's geographic location and number of vehicles, rather than making such expense amounts available only on condition of a vehicle-related debt.

Congress did not premise the applicability of the National and Local Standards on the nature or amount of debtors' actual expenses. Rather, Congress dealt with loan payments in a completely separate section of the means test, 11 U.S.C. § 707(b)(2)(A)(iii). This Court has warned against judicial interpretations that add words to provisions of the Bankruptcy Code that Congress specifically did not include. That warning is particularly salient here, given that an earlier version of BAPCPA — which was rejected in the final legislation that was enacted — included the very language that the Respondent would have this Court insert into the statute.

Moreover, the objective interpretation advanced here is completely consistent with a rational policy choice made by Congress. To hold otherwise would create perverse incentives penalizing thrifty debtors who continue to drive cars they have paid off, while encouraging debtors contemplating chapter 13 to finance the purchase of a new car.

The judgment below should be reversed.

ARGUMENT

The provision at issue, 11 U.S.C. § 707(b)(2), was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protections Act of 2005 ("BAPCPA"). This new section of the Code, commonly referred to as the "means test," represented the "heart of BAPCPA's consumer bankruptcy reform." H.R. Rep. No. 109-31, pt. 1 at 2 (2005), 2005 U.S. Code Cong. & Admin. News 88, 89 ("House Report"). The test — which is applicable only in the case of debtors with income in excess of the median income in their state, *see* § 707(b)(7)(A) —is used to determine whether a chapter 7 filing is presumptively abusive. § 707(b)(2)(A)(i) ("the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii) and (iv)" is above listed dollar thresholds).

The means test is incorporated into chapter 13 by 11 U.S.C. § 1325(b), which governs the extent to which a chapter 13 plan must provide for the claims of unsecured creditors. Under that provision an objecting creditor or trustee can force a chapter 13 debtor to pay all of his or her "projected disposable income" to the chapter 13 trustee over a period of three to five years. Under the BAPCPA amendments to this section for debtors whose income exceeds the applicable median family income, *see* 11 U.S.C. § 1325(b)(3), "disposable income" is defined as being the debtor's "current monthly income" less "amounts reasonably necessary to be expended," as "determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." 11 U.S.C. § 1325(b)(2). Petitioner's income is above median. For chapter 13 debtors at or below median income, means test expenses do not apply.

This case involves a dispute over what "amounts reasonably necessary to be expended" should have been used by the bankruptcy court to calculate Petitioner's "disposable income" with regard to the monthly transportation expenses attributed to his 2004 Toyota Camry, which he owned in full. Under the plain language of the statute, as well as its legislative history and relevant policy considerations, an above-median-income debtor should be allowed a deduction for the ownership costs of a vehicle regardless of whether the debtor is still making loan or lease payments.

A. The Plain Language of the Statute Demonstrates That Petitioner Is Entitled To An Ownership Deduction.

"The starting point in discerning congressional intent" underlying a provision of the Bankruptcy Code is always "the existing statutory text." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004).

Section 707(b)(2) provides in pertinent part:

> The debtor's monthly expenses ***shall be*** the debtor's applicable ***monthly expense amounts specified under the National Standards and Local Standards, and*** the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue

> Service for the area in which the debtor resides . . .

11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added).

The "applicable" standards referenced in the statute, including the applicable standards for transportation expenses, are located in the Financial Analysis Handbook of the IRS's Internal Revenue Manual ("IRM"), which the IRS uses in determining a taxpayer's ability to pay a delinquent tax liability. *See* http://www.irs.gov/irm/part5/ch15s01.html. House Report at 13-14. The standards themselves are located at http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

The plain language of the statute demonstrates that Congress decided to use the IRS standards on transportation expenses, not the debtor's actual expenses, as the appropriate figure to be used in the means test for transportation expenses.

First, Congress was very much aware of the difference between using the IRS published standards and "actual monthly expenses." The statute explicitly distinguishes between "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards," on the one hand, and "the debtor's ***actual*** monthly expenses" (emphasis added), on the other. The statute specifies the use of the latter with regard to "the categories specified as Other Necessary

Expenses issued by the Internal Revenue Service for the area in which the debtor resides."[2]

Thus, the statute draws a clear distinction between ***actual*** expenses and the ***applicable*** amounts specified under the IRS published statements. Congress used "applicable" to mean something other than "actual." If the Court is to give effect to all the words of the statute, the term "applicable monthly expense amounts" cannot mean the same thing as "actual monthly expenses." Under the statute, a debtor's "actual monthly expenses" are relevant only with regard to the IRS's "Other Necessary Expenses;" they are not relevant to deductions taken under the National and Local Standards, including the transportation ownership deduction.

Certainly, Congress knew how to say "actual" when it meant to refer to "actual" expenses. In fact, when Congress intended to condition a deduction on a debtor's actual expenditure or showing of need, it did so. For example, Section 707(b)(2)(A)(ii) uses the following phrases to describe the nature of various other deductions: "debtor's reasonably necessary expenses incurred," § 707(b)(2)(A)(ii)(I) (Family Violence Prevention and Services Act expenses); "expenses paid by the debtor that are reasonable and necessary," § 707(b)(2)(A)(ii)(II) (expenses for elderly, chronically ill or disabled immediate family members); "reasonable and necessary [expenses]," § 707(b)(2)(A)(ii)(I) (additional allowances for food and clothing up to 5%); and "actual expenses [that are] are reasonable and necessary," § 707(b)(2)(A)(ii)(V) (additional home energy costs).

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[2] The Other Necessary Expense category includes expenses such as legal and accounting fees, charitable donations, childcare and education. IRM Section 5.15.1.10, available at http://www.irs.gov/irm/part5/ch15s01.html#d0e216108. The following line of § 707(b)(2)(ii)(I) directs the bankruptcy court also to allow for "reasonably necessary health insurance, disability insurance and health savings account expenses."

The language of these provisions shows that when Congress intended to condition a deduction on a debtor's actual expenditure or a showing of need, it did so. The absence of this type of language with regard to the National and Local Standards — again, the statute refers only to the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards" — suggests that courts should not require more of the debtor other than to show that the "amount specified" under the Local Standard be applicable by virtue of the debtor's geography and number of vehicles.

This reading of Section 707(b)(2)(A)(ii)(I) is "mandated by the grammatical structure of the statute." *United States v. Ron Pair Enterprises,* 489 U.S. 235, 241 (1989). The category of "applicable monthly expense amounts specified under the National Standards and Local Standards" is separated by a comma and the conjunctive "and" from the category of "Other Necessary Expenses," thereby emphasizing the separate and independent treatment of the two categories. The wording of the statute specifically differentiates between "applicable" and "actual" monthly expenses and therefore, "applicable" expenses are all those that could possibly apply regardless of whether such expenses are "actual."

The grammatical structure of Section 707(b)(2)(A)(ii)(I) parallels that of the provision construed in *Ron Pair*, and the same reasoning is applicable. *See* 489 U.S. at 241-42 (in interpreting § 506(a) of the Bankruptcy Code, "[t]he phrase 'interest on such claim' is set aside by commas, and separated from the reference to fees, costs, and charges by the conjunctive words 'and any.' As a result, the phrase 'interest on such claim' stands independent of the language that follows.").

There is another reason that the statute should be interpreted as requiring the application of IRS standards on transportation expenses: the contrary interpretation (tying a transportation expense to the existence of a loan or lease payment) would create tension with another portion of the same statutory section. Two sentences after the opening reference to National and Local Standards, Section 707(b)(2)(A)(ii)(I) contains additional language: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." This provision further indicates that Congress intended to allow an ownership expense even when a debtor has no debt payment on a vehicle. Otherwise, if Congress had not so intended, there would be little reason for this limitation.[3]

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[3] The limitation against including loan payments was likely included because the means test allows separately for a deduction for monthly payments on secured debts and leases. § 707(b)(2)(A)(iii). The means test excludes debt payments other than secured debt payments but allows an expense for vehicle ownership independent of whether there is a debt payment.

Our statutory interpretation is shared by an influential bankruptcy treatise as well:

> The better view is that, because the language refers to deducting the "amounts specified" in the standards, and not actual expenses, the ownership allowance specified in the standards is the minimum amount to be deducted for the expense of car ownership, rather than the remaining car payments on a vehicle, if any . . . .

6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c], at p. 707-43 (15th ed. Rev. 2009). The treatise continues:

> [T]he better reasoned decisions considering this issue have permitted debtors to deduct the amounts specified for the transportation ownership expense allowance even if they do not have an obligation to make car loan payments or are intending to surrender the vehicle.

Id. at p. 707-44. Bankruptcy Judge Eugene R. Wedoff has reached the same conclusion:

> [T]here is a question of whether an ownership expense may be claimed by a debtor who owns a car free of any lien. . . . [S]ince the means test treats the Local Standards not as caps but as fixed allowances, it is more reasonable to permit a debtor to claim the Local Standards ownership expense based on the number of vehicles the debtor owns or leases, rather than on the number for which the debtor makes payments.

Eugene R. Wedoff, *Means Testing in the New 707(b)*, 79 AM. BANKR. L.J. 231, 257-58 (2005).

For all these reasons, Section 707(b)(2)(A)(ii)(I) should be interpreted as requiring the use of the IRS standards on transportation expenses, not the debtor's actual expenses.

B. The Contrary Reading of the Statutory Text Is Unsupportable.

The Ninth Circuit's judgment below would condition the Ownership Expense component of the transportation standards on whether the particular debtor had an existing loan or lease payment on the vehicle at the time of filing a bankruptcy petition. This alternative reading of the statute has no merit.

First, the Ninth Circuit suggested that the ownership cost deduction is "applicable" (within the meaning of the statute) only if the debtor is in fact incurring such an expense in the form of a loan or lease payment on that vehicle. But such a suggestion is misplaced. The Ninth Circuit construed Section 707(b)(2)(A)(ii)(I) as though it provided that the debtor's monthly expenses would be the monthly expense amounts specified under the IRS standards, "only if the debtor is actually incurring such expenses," or perhaps "only if the IRS standards are equal to or lower than the debtor's actual expenses." But the statute does not contain any such language or qualifications. The statute does not provide that "applicable" means that a debtor actually is making a loan or lease payment, and the Ninth Circuit's approach would require adding words to the text of the statute, in violation of basic principles of statutory construction. *See CSX Transp., Inc. v.*

Georgia State Bd. of Equalization, 552 U.S. 9, 29 (2007) (rejecting statutory interpretation that "depends upon the addition of words to a statutory provision") (internal quotation marks and citation omitted); *Patterson v. Shumate*, 504 U.S. 753, 758-59 (1992) (refusing to limit phrase "applicable nonbankruptcy law" to state law, on the ground that it would require adding limiting language to statute).

Furthermore, "applicable" is an adjective that modifies the "amounts specified" in the Standards. It does not modify the phrase "debtor's monthly expenses," which appears at the beginning of Section 707(b)(2)(A)(ii)(I). The adjective "applicable" functions to narrow the reference to "amounts specified"; it does not refer to, modify nor restrict the debtor's actual monthly expenses.

Thus, Section 707(b)(2)(A)(ii)(I) is best interpreted to mean that the Local Standard vehicle ownership deduction is "applicable" to the debtor by virtue of his or her geographic region and number of cars, regardless of whether that deduction is an actual expense. The IRS standards on transportation expenses are presented in chart form and vary according to number of vehicles owned, geographical region, and whether the debtor resides in a metropolitan statistical area (MSA).[4] These factors determine precisely what transportation expense amount is "applicable" to a debtor's particular circumstances. Hence, in using the word "applicable" (rather than the phrase "if applicable") in Section 707(b)(2)(A)(ii)(I), Congress directed bankruptcy courts to determine (based on a particular debtor's place of residence and number of cars) which of the Standard deductions was "applicable" to a particular debtor, in light of that debtor's location and number of vehicles. Congress did not direct bankruptcy courts to inquire as to a debtor's ***actual*** transportation expenses.

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[4] *See* http://www.irs.gov/businesses/small/article/0,,id=104623,00.htm.

The Ninth Circuit noted (but did not rely upon in its decision) the IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, *see* IRS Collection Financial Standards (March 1, 2009), and the IRS Internal Revenue Manual ("IRM"), which the IRS uses in determining a taxpayer's ability to pay a delinquent tax liability.[5] The IRS tables recognize two components of transportation expenses connected to the ownership of motor vehicles: an "Ownership Expense" and an "Operating Expense" keyed to different regions of the nation.[6] The IRS Collection Financial Standards with respect to Allowable Living Expenses for Transportation currently provide:

> If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a

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[5] The portion of the current Internal Revenue Service Manual, Financial Analysis Handbook discussing transportation cost deductions can be found at: http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1005.

[6] http://www.irs.gov/individuals/article/0,,id=96543,00.html.

> car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense. In both of these cases, the taxpayer is allowed the amount actually spent, or the standard, whichever is less.

When Congress enacted the BAPCPA in 2005, and when this bankruptcy case was filed, the then-extant version of IRS Collection Financial Standards (which are reprinted in relevant part in the Appendix to this brief) did not contain this language. In fact, the 2005 version of the standards did not address the issue of whether the transportation ownership expense should be limited to taxpayers who actually make car payments.[7]

The IRS commentary does not control the proper interpretation of Section 707(b)(2)(A)(ii)(I) in this case, for several reasons. First, the IRS is not an administrative agency that administers the Bankruptcy Code, so there is no basis for a court to defer to its administrative expertise.

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[7] To be sure, section 5.15.1.7 of the IRS Manual (05-01-2004) provided as follows: "If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense." Another section stated: "Note: If the taxpayer has no car payment, or no car, question how the taxpayer travels to and from work, grocer, medical care, etc. The taxpayer is only allowed the operating cost or the cost of transportation." But the Financial Standards did not contain these comments.

Next, Section 707(b)(2)(A)(ii)(I) does not incorporate the IRM or the IRS commentary into the Bankruptcy Code. Rather, the statutory language adopts only the IRS transportation standards and does not mention the IRM or the "Financial Analysis" sections of the IRM. If Congress had intended to incorporate the entire IRS methodology, and not merely the transportation standards, it would have said so directly. Instead, according to subparagraph (A) of Section 707(b)(2), the expense deduction to be used in the calculation "shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, . . . issued by the Internal Revenue Service." Therefore, it would be error to rewrite the statute by incorporating not only the IRS's "National Standards and Local Standards" for the applicable categories of expenses and geographic areas, but also all of the IRS commentary and methodologies that IRS has attached to those standards.

There is a good reason that Section 707(b)(2)(A)(ii)(I) incorporates only the expense standards and not the entire IRM: the IRM has a completely different purpose from that of the Code. The pertinent portion of the IRM governs the repayment of delinquent taxes, not the computation of the means test or the calculation of the debtor's "projected disposable income" during the plan period. The IRS itself has discretion to depart from the standards, based on the facts and circumstances on the individual taxpayer[8] – which demonstrates that

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[8] For example, the IRM provides: "National and local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific

Section 707(b)(2)(A)(ii)(I), meant to establish an objective test, does not adopt the IRM or the IRS commentary.

Indeed, to incorporate the entire IRS commentary into Section 707(b)(2)(A)(ii)(I) would delegate to the IRS the power to make (and change) the Bankruptcy Code itself. The IRS could create qualifications never enacted by Congress. For example, the IRS could decide administratively that a debtor owing a car loan should not be allowed a transportation expense for an automobile if he or she should be able to take public transportation instead. The IRS could seek to review the "necessity" of a car in circumstances where it believes a debtor could do without one. The IRS could decide whether certain classes of cars are ineligible for transportation expenses. If the approach of the IRS commentary were adopted, there would be no logical stopping point to vesting the IRS with the authority to alter bankruptcy law.

The IRS itself disavows any intent to have the financial standards from the IRM apply in any context other than tax collection and specifically disclaims any intent to have the IRM apply in the context of bankruptcy expense calculations:

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taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file." IRM, Section 5.15.1.7.5 (available at http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012).
"A taxpayer who claims more than the total allowed by the national standards must provide documentation to substantiate and justify as necessary those expenses that exceed the total national standard amounts." IRM, Section 5.15.1.8.3 (available at http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012).

> Disclaimer: IRS Collection Financial Standards are intended for use in calculating repayment of delinquent taxes. These Standards are effective on March 1, 2010 for purposes of federal tax administration only. Expense information for use in bankruptcy calculations can be found on the website for the U.S. Trustee Program.[9]

Thus, the intent of the IRS – the administrative body that formulated the IRM – supports a refusal to incorporate the IRM or other IRS commentary into the means test for determination of disposable income. The IRS's view is consistent with the intent of Congress.

C. The Legislative History Demonstrates That The Petitioner Is Entitled To A Deduction.

The legislative history supports our construction of Section 707(b)(2)(A)(ii)(I) as well. The legislative history establishes that Congress was aware that the IRS standards were not the same as a debtor's actual expenses and that Congress did not intend to limit the bankruptcy means test expense deductions to the debtor's actual expenses. Instead, Congress adopted a uniform and readily applied formula that creates an objective test.

Congress squarely confronted the question of whether to use a debtor's actual expenses in the means test calculation, or whether to use IRS standards that might differ markedly from the debtor's actual situation. During the markup of H.R. 833 (the House legislation which ultimately became BAPCA), Rep. Henry J. Hyde, chairman of the House Judiciary Committee, and a central figure in the enactment of BAPCA, sought to replace the means test's IRS expense standards with "a reasonably necessary expense standard."[10] Rep. Hyde explained that "a reasonably necessary standard provided more flexibility for the court's determination of a debtor's expenses" than the IRS expense standards allowed.[11]

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[9] Available at http://www.irs.gov/individuals/article/0,,id=96543,00.html.

The House Judiciary Committee ultimately rejected Rep. Hyde's proposed approach and retained the IRS expense standards as part of the means test. In the words of the members of the House Judiciary Committee who opposed the bill that eventually became law, "[t]he bill . . . makes substantial changes to chapter 13 by substituting the IRS expense standards to calculate disposable income . . . [T]he formula remains inflexible and divorced from the debtor's actual circumstances." Report of the Committee on the Judiciary, House of Representatives, to Accompany S. 256, H. Rep. No. 109-31, Pt. 1, 109th Cong., 1st Sess. 553 (2005), reprinted in 2005 U.S. Code Cong. & Admin. News 88.

Even after the House mark-up of H.R. 833, Rep. Hyde continued to press for the deletion of the IRS expense standards and the enactment of a more flexible approach. During floor debate, Rep. Hyde criticized the expense standards as "rigid and inflexible."[12] The Majority Leader defended them as "clear, defined standards."[13] The Clinton Administration released a statement warning that the House bill "would limit access to Chapter 7 to debtors who meet an inflexible and arbitrary means test. . . . H.R. 833 simply takes IRS expense standards, which were not developed for bankruptcy purposes, and applies them rigidly to determine ability to repay in bankruptcy."[14] The House shrugged off the criticism and enacted the bill, and the Senate followed suit.

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[10] Susan Jensen, *A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 485, 523 (2005).

[11] *Id.* at 524 n.222.

As one commentator has remarked, the rejection "of a chairman's position on legislation considered by his or her own committee by members of his or her own political party is highly unusual."[15] The decision to adopt the IRS expense standards rather than the debtor's actual expenses, in other words, was not lightly made, and this Court should not undo the congressional judgment after the fact. Congress chose a bright-line approach that did not vary according the debtor's actual expenses.

There is further relevant legislative history as well. An earlier draft of the means test component of BAPCA required calculation of "projected monthly net income," which provided for expense allowances "as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief." H.R. Rep. 105-540 (May 18, 1998), H.R. 3150, 105th Cong. (1998). In the version that Congress passed in 2005, the reference to the IRS "financial analysis" was removed and replaced with the language referencing expense allowances under "the applicable monthly expense amounts specified under the National and Local Standards." § 707(b)(2)(A)(ii)(I). This change evidences Congress' intent that bankruptcy courts not be bound by the IRS commentary contained in the IRM and confirms that courts should look only to the IRS standards tables, which were incorporated into the statute. This Court has recognized that the legislative history of a prior bill that was not enacted can be useful to interpret language in a bill that was ultimately enacted. *See e.g., Dawson Chemical Co. v. Rohm & Haas Co.,* 448 U.S. 176, 204 (1980); *United States v. Enmons,* 410 U.S. 396, 404 (1973); *Transcontinental & Western Air, Inc. v. Civil Aeronautics Bd.,* 336 U.S. 601, 606 (1949).[16]

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[12] 145 Cong. Rec. H2718 (daily ed. May 5, 1999).

[13] *Id.* at H2719.

[14] Executive Office of the President – Office of Management and Budget, Statement of Administration Policy – H.R. 833 – Bankruptcy Reform Act of 1999, at 1 (May 5, 1999), available at http://clinton2nara.gov/OMB/legislative/sap/HR833-h.html, reprinted in Jensen, 79 AM. BANKR. L.J. at 526.

[15] Jensen, 79 AM. BANKR. L.J. at 524.

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[16] Respondent may point to language in the House Report broadly stating that the bill contains "an *income/expense* screening mechanism ('needs-based bankruptcy relief' or 'means testing'), which is intended to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. No. 109-31, pt.1 at 2 (2005), reprinted in 2005 U.S. Code Cong. & Admin. News 88, 89. But this comment is general and cannot be taken to mean that every dispute regarding the interpretation of the means testing provisions must be resolved in favor of creditors. In fact, the comment supports our position. It demonstrates why Congress adopted an objective test -- to limit courts'

D. Policy Considerations Militate In Favor Of Petitioner.

BAPCA moved bankruptcy courts from a system of case-by-case determinations of reasonableness to a more uniform approach, based on standardized deductions listed in IRS tables. It also sought to avoid disputes about the reasonableness of particular expenses and instead create an aggregated standard budget that is presumed to represent a reasonable total level of spending for different size households in particular geographic regions of the country. Thus, "[t]he provisions of section 707(b)(2) create a bright line test to determine whether a debtor's chapter 7 case is to be presumed abusive for purposes of section 707(b)." 6 COLLIER ON BANKRUPTCY ¶ 707.05[2][a], at 707-40 (15th ed. Rev. 2009).

The statutory interpretation advanced here is entirely consistent with that congressional purpose. The transaction costs saved by reliance on standardized, uniform tables more than compensate for any perceived unfairness in allowing debtors to take an Ownership Expense for used cars they own free and clear when deciding how much disposable income they have available to pay their unsecured creditors.[17] Every objective test creates questions of

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perceived discretion in letting debtors pay less than they can afford as determined by expense standards Congress itself incorporated into the Code.

[17] The Ninth Circuit's construction is subject to the same criticism of line-drawing inherent in any objective test. To the extent that the statute were interpreted to mean that the

line-drawing and perceived fairness, and the issues with respect to transportation under the Financial Standards also extend to food, medical care, and other matters.[18]

There is nothing irrational about a statutory scheme that allows an Ownership Expense even when a debtor does not have a vehicle payment at the snapshot of time the bankruptcy petition is filed. The statute creates an objective test, based on a reasonable transportation allowance, to be applied at the outset of what is likely to be a 60-month bankruptcy process for consumer debtors under chapter 13. Given the inherent uncertainties of predicting a debtor's expenses several years into the future, it was entirely sensible for Congress to design a system that did not depend on the particular mix of a debtor's actual vehicle expenses at the time the case is commenced. After all, those

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"applicable monthly expense amount" need not be limited to the precise amount of a debtor's vehicle payment – but only that such a payment must in fact exist before the vehicle-ownership expense becomes "applicable" – the same criticism of unfairness would apply. That is, such an approach would permit a debtor with a modest lease or loan payment (or a few remaining payments) to claim the much larger, entire categorical amount for his or her geographic region under the IRS Standards.

[18] For example, debtors receive a national allowance for food even if they incur no actual food expenses because they live with relatives. *See* http://www.irs.gov/businesses/small/article/0,,id=104627,00.htmlDebtors also receive an Out-of-Pocket Health Care allowance of $60 per month per household member ($144 for taxpayers 65 and older) even if they do not have any actual health care expenses or if their expenses are less than the allowance. They are also allowed a deduction for any actual health care expenses above the standard allowance.

expenses may change over the duration of the bankruptcy case.[19]

For example, a debtor's vehicle-related costs can be significant, over and above what he or she might expend towards a loan or lease payment. Some of those expenses are included in the "Operating Expense" component of the IRS transportation standards, but not all. According to the IRM, the Operating Expense standard includes insurance, registration fees, fuel, parking and tolls, and only "normal maintenance." IRM § 5.19.1.4.3.4. It does not include depreciation or major repairs. For debtors driving older vehicles, recognition of these items as components of their Ownership Expense is entirely sensible.[20] Given the purpose of the means test in a chapter 13 case — determining the monthly amount that a debtor has available in excess of necessary expenses over the course of a five-year plan — consideration of a factor for depreciation and major repairs is entirely appropriate.[21]

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[19] The statute's formula, which ultimately looks to a total of allowed expenses, also allows debtors budget flexibility to scrimp on one category of expenses in order to pay more on others. For example, in NACBA's experience, debtors often scrimp on some allowed expenses (such as food or car ownership) to be able to send children to religious schools, despite the small allowance in the statute for children's educational expenses. If the means test had been intended to permit eliminating or limiting allowances based on actual expenses, it would not have looked to the total of allowed expenses, but instead stated that the debtor's disposable income is computed using an expense-by-expense comparison of the debtor's actual expenses and the allowances.

[20] Automotive reliability studies show, for example, that the average 2000 vehicle is 2.5 to 5 times more likely than a 2005 vehicle to need major repairs to the engine, cooling system, air conditioning and suspension. Consumer Reports, Used Car Buying Kit, Reliability History (Average Problem Rates) available at http://www.consumerrreports.org/cro/cars/ratings/reliability-histories-406/index.htm.

Indeed, it is the contrary interpretation of the statute that would produce an odd policy result. If only debtors with car payments were allowed the Ownership Expense, then debtors driving older, fully paid vehicles would be encouraged to finance the purchase of a new car, or to encumber an old car with new debt, just prior to filing a bankruptcy petition, in order to be sure of having the resources to provide for reliable transportation over the course of a plan of up to five years. Certainly, none of the core purposes of bankruptcy would be served by encouraging the creation of new debt and penalizing more thrifty debtors. It makes little sense to deny an ownership deduction to a frugal debtor who, although he has fully paid for his used car, finds himself in need of bankruptcy relief, while allowing the deduction to a less thrifty debtor who has acquired a late-model car by incurring a large secured debt. As one treatise has observed:

> Moreover, the concept of an ownership allowance should encompass both debtors who borrow money to purchase their cards and those who save money to purchase their cars. Borrowers who have saved money to purchase their current vehicles and are saving to replace them should be treated the

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[21] Although the IRS manual provides an additional $200 for an older car for extra operating expenses, that additional allowance is nowhere in the standards, and some chapter 13 trustees have opposed it when debtors have sought it.

> same as those who are making loan payments. Certainly, the Bankruptcy Code should not encourage debtors to borrow, rather than save, to purchase cars.

6 COLLIER ON BANKRUPTCY ¶ 707.05[2][c], at 707-45 (15th ed. Rev. 2009).

In addition, a debtor who owns an old car outright at filing likely will need to buy a new one before completion of a five-year chapter 13 plan. To recognize this eventual expense through the use of a monthly, standard Ownership Expense is completely consistent with the purposes of bankruptcy. *See* Eugene R. Wedoff, *Means Testing in the New 707(b)*, 79 AM. BANKR. L.J. 231, 258 (2005) ("This approach reflects the reality that a car for which the debtor no longer makes payments may soon need to be replaced (so that the debtor will actually have ownership expenses), and it avoids arbitrary distinctions between debtors who have only a few car payments left at the time of their bankruptcy filing and those who finished making their car payments just before the filing.").

E. The Decision in *Lanning* Supports Petitioner.

This Court's recent decision in *Hamilton v. Lanning*, No. 08-998 (June 7, 2010), is consistent with our interpretation of Section 707(b)(2)(A)(ii)(I) as well. *Lanning* concerned the interpretation of the phrase "projected disposable income" in a section of chapter 13. 11 U.S.C. § 1325(b)(1). *Lanning* held that, when a bankruptcy court calculates a chapter 13 debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.

There is an important difference between *Lanning* and this case. *Lanning* concerned the interpretation of the word "projected" in Section 1325(b)(1), rather than any of the language in Section 707(b)(2)(A)(ii)(I). Nevertheless, to the extent *Lanning* is relevant here, it supports Petitioner rather than Respondent.

Lanning eschewed a case-by-case determination of future disposable income and stressed that a court has discretion to depart from past patterns of income only when a future event is known or virtually certain. This Court emphasized "the important role that the statutory formula for calculating 'disposable income' plays under the forward-looking approach."

> [A] court taking the forward-looking approach should begin by calculating disposable income, and in most cases, nothing more is required. It is only in unusual cases that a court may go further and take into account other known or virtually certain information about the debtor's future income or expense.

Slip op. at 12-13.

Lanning thus underscored the importance of predictability and ease of administration of bankruptcy proceedings. In this case, any interpretation of Section 707(b)(2)(A)(ii)(I) that would involve the debtor's actual expenses would entail numerous individual variations and case-by-case inquiries that would defeat the purpose of the means test.

Further, although *Lanning* adopted a forward-looking approach to Section 1325(b)(1), that approach is entirely consistent with the statutory interpretation we urge. For example, in *In re Washburn*, 579 F.3d 934, 940-42 (CA8 2009), the Eighth Circuit explained that it was adopting Petitioner's interpretation of Section 707(b)(2)(A)(ii)(I), even though in *In re Frederickson,* 545 F.3d 652 (CA8 2008), *cert. denied,* 129 S.Ct. 1630 (2009), the Eighth Circuit had previously adopted a forward-looking approach to defining "projected disposable income" under Section 1325(b)(1). The Eighth Circuit's reasoning illustrates that Petitioner's statutory construction in this case is completely consistent with the rule articulated in *Lanning*.

CONCLUSION

The judgment below should be reserved.

Respectfully submitted,

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APPENDIX

Internal Revenue Service IRS.gov

DEPARTMENT OF THE TREASURY

Allowable Living Expenses for Transportation

Collection Financial Standards
Financial Analysis - Local Standards: Transportation *

Ownership Costs			
National		**First Car**	**Second Car**
		$475	$338
Operating Costs & Public Transportation Costs			
Region	**No Car**	**One Car**	**Two Cars**
Northeast Region	$230	$298	$393
New York	$302	$384	$479
Philadelphia	$236	$296	$392
Boston	$259	$284	$380
Pittsburgh	$161	$286	$380
Midwest Region	$194	$251	$345
Chicago	$257	$329	$422
Detroit	$312	$376	$469
Milwaukee	$212	$247	$341
Minneapolis-St. Paul	$276	$303	$397
Cleveland	$198	$293	$387
Cincinnati	$222	$272	$365
St. Louis	$203	$287	$383
Kansas City	$246	$291	$384
South Region	$197	$242	$336
Washington, D.C.	$289	$313	$407
Baltimore	$225	$240	$334
Atlanta	$283	$258	$351
Miami	$284	$344	$439
Tampa	$255	$265	$359
Dallas-Ft. Worth	$309	$332	$425
Houston	$281	$367	$462
West Region	$246	$305	$399
Los Angeles	$275	$353	$448
San Francisco	$317	$373	$466
San Diego	$311	$318	$415
Portland	$189	$246	$339

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Seattle	$258	$335	$427
Honolulu	$295	$314	$409
Anchorage	$312	$336	$431
Phoenix	$273	$326	$420
Denver	$302	$351	$442

* Does not include personal property taxes. (effective January 1, 2005)

For Use with Allowable Transportation Expenses Table

The Operating Costs and Public Transportation Costs sections of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area (MSA). The following table lists the states that comprise each Census Region. Once the taxpayer's Census Region has been ascertained, to determine if an MSA standard is applicable, use the definitions below to see if the taxpayer lives within an MSA (MSAs are defined by county and city, where applicable). If the taxpayer does not reside in an MSA, use the regional standard.

Northeast Census Region

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey		
MSA	**COUNTIES**	
New York	*in NY:*	Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester
	in NJ:	Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren
	in CT:	Fairfield, Litchfield, Middlesex, New Haven
	in PA:	Pike
Philadelphia	*in PA:*	Bucks, Chester, Delaware, Montgomery, Philadelphia
	in NJ:	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem
	in DE:	New Castle
	in MD:	Cecil
Boston	*in MA:*	Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth, Suffolk, Worcester
	in NH:	Hillsborough, Merrimack, Rockingham, Strafford
	in CT:	Windham
	in ME:	York
Pittsburgh	*in PA:*	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

Midwest Census Region

North Dakota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota, Iowa

MSA	COUNTIES (unless otherwise specified)	
Chicago	*in IL:*	Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, Will
	in IN:	Lake, Porter
	in WI:	Kenosha
Detroit	*in MI:*	Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne
Milwaukee	*in WI:*	Milwaukee, Ozaukee, Racine, Washington, Waukesha
Minneapolis-St. Paul	*in MN:*	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
	in WI:	Pierce, St. Croix
Cleveland	*in OH:*	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit
Cincinnati	*in OH:*	Brown, Butler, Clermont, Hamilton, Warren
	in KY:	Boone, Campbell, Gallatin, Grant, Kenton, Pendleton
	in IN:	Dearborn, Ohio
St. Louis	*in MO:*	Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
	in IL:	Clinton, Jersey, Madison, Monroe, St.Clair
Kansas City	*in MO:*	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
	in KS:	Johnson, Leavenworth, Miami, Wyandotte

South Census Region

Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Virginia, Maryland, District of Columbia, Delaware, North Carolina, South Carolina, Georgia, Florida, Alabama

MSA	COUNTIES (unless otherwise specified)	
Washington, D.C.	*in DC:*	District of Columbia
	in MD:	Calvert, Charles, Frederick, Montgomery, Prince George's, Washington
	in VA:	Arlington, Clarke, Culpepper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
	in WV:	Berkeley, Jefferson
Baltimore	*in MD:*	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Atlanta	*in*	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb,

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	GA:	Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton
Miami	*in FL:*	Broward, Miami-Dade
Tampa	*in FL:*	Hernando, Hillsborough, Pasco, Pinellas
Dallas-Ft. Worth	*in TX:*	Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant
Houston	*in TX:*	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller

West Census Region:

New Mexico, Arizona, Colorado, Wyoming, Montana, Nevada, Utah, Washington, Oregon, Idaho, California, Alaska, Hawaii		
MSA	**COUNTIES (unless otherwise specified)**	
Los Angeles	*in CA:*	Los Angeles, Orange, Riverside, San Bernadino, Ventura
San Francisco	*in CA:*	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
San Diego	*in CA:*	San Diego
Portland	*in OR:*	Clackamas, Columbia, Marion, Multnomah, Polk, Washington, Yamhill
	in WA:	Clark
Seattle	*in WA:*	Island, King, Kitsap, Pierce, Snohomish, Thurston
Honolulu	*in HI:*	Honolulu
Anchorage	*in AK:*	Anchorage borough
Phoenix	*in AZ:*	Maricopa, Pinal
Denver	*in CO:*	Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, Weld